







# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 226

POLISH NATIONAL ALLIANCE OF THE UNITED  
STATES OF NORTH AMERICA, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT

## INDEX.

	Original	Print
Proceedings before National Labor Relations Board.....	1	1
Proceedings before Trial Examiner.....	1	1
Caption and appearances.....	1	1
Offers in evidence.....	3	1
Testimony of Walter J. Andrezejewski.....	7	5
Joseph Gajda.....	88	16
Joseph Lopatowski.....	103	17
Offers in evidence.....	198	18
Testimony of James M. Algozino.....	200	20
Offers in evidence.....	202	21
Testimony of Joseph C. Bronars.....	204	23
Charles Rozmarek.....	236	38
Board's exhibits:		
No.		
1—Complaint.....	307	41
7—Answer of Polish National Alliance.....	320	46
Exhibit "A"—Constitution and By-laws..	326	52
9—Annual Statement of Affairs, P. N. A.....	384	105
10—Manual of Rates, P. N. A.....	386	106
11—Benefit Certificate (Specimen).....	403	121
17—List of positions in P. N. A. office with salaries.	416	122

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 2, 1943.

Proceedings before National Labor Relations Board—Continued

Proceedings before Trial Examiner—Continued

Board's exhibits—Continued

No.	Original	Print
18—Letter of October 24, 1941 from P. N. A. to lodges .....	417	122
19—Masthead of Weekly Zgoda .....	420	125
20—Article in Zgoda about strike, Dec. 14, 1941..	420	126
21—Masthead Daily Zgoda .....	422	128
25—Letter of O'Connell (Union) to Swietlik (Censor) Aug. 30, 1941 .....	426	128
26—Letter of Swietlik, Censor, to O'Connell Sept. 4, 1941 .....	427	129
33—Letter of Protest to Censor .....	440	130
34—Letter of Censor .....	442	132
35—Stipulation as to facts .....	443	132
36—Certificate as to Business .....	447	137
37—Statement of expenses .....	448	138
38—Statement of expenses .....	448	138
Respondent's exhibits:		
1—Charter of P. N. A. ....	449	138
2—Amendment to Articles of Incorporation P. N. A. ....	454	143
3—Sections from Insurance Code of Illinois ....	459	148
4—Articles of Incorporation of Alliance Printers and Publishers, Inc. ....	463	152
6—Disbursements for relief, etc. ....	481	167
11—Letter Rozmarek to Union March 27, 1941..	490	170
12—Masthead of Dziennik Zwiazkowy .....	491	171
13—Statement of ownership of Daily Zgoda .....	492	172
14—Master's Report in Strike Injunction case; recited as to .....	494	174
Intermediate Report by Trial Examiner Hektoen .....	495	175
Order transferring case to N. L. R. B. (omitted in printing) ..	528	
Request for permission to argue orally (omitted in printing) ..	529	
Exceptions by P. N. A. to Intermediate Report .....	530	182
Oral argument had .....	538	184
Decision and order of National Labor Relations Board, August 11, 1942 .....	539	185
Certificate of Board to Transcript. (omitted in printing) ..	576	
Proceedings in U. S. C. C. A., Seventh Circuit .....	578	221
Petition for Review filed August 21, 1942, by Polish National Alliance .....	578	221
Points Relied Upon .....	584	223
Answer of N. L. R. B. to Petition; and Request for Enforcement. ....	586	224
Reply to request for Enforcement .....	592	225
Designation of Parts of Record .....	594	
Order extending time for filing brief and appendix to December 5, 1942 (omitted in printing) .....	603	
Appearance of counsel for petitioner .....	604	227
Minute entry of argument and submission .....	605	228

# INDEX

iii

Proceedings in U. S. C. C. A., Seventh Circuit—Continued	Original	Print
Opinion, Major, J. ....	606	228
Judgment. ....	619	240
Motion for stay of mandate. ....	620	241
Order granting stay. ....	623	243
Decree. ....	624	244
Clerk's certificate. ....	629	247
Order allowing certiorari. ....	630	249
Stipulation as to printed record. ....	631	249



[fols. 1-2]

# **BEFORE NATIONAL LABOR RELATIONS BOARD**

## **Report of Proceedings**

Customs Court Room,  
Canal and Harrison Sts.,  
Chicago, Illinois,  
Monday, March 23rd, 1942.

The above entitled matter came on for hearing pursuant to notice, at 10:00 a. m.

Before Josef L. Hektoen, Trial Examiner

### **APPEARANCES:**

Lester Asher, and Robert T. Drake, Attorneys, appearing on behalf of the National Labor Relations Board.

Casimir E. Midowicz and Ewart Harris, 1717-139 N. Clark Street, Chicago, Illinois, appearing on behalf of the Respondent.

S. G. Lippman, 134 N. La Salle St., Chicago, Illinois, appearing on behalf of Office Employees' Union No. 20732.

Trial Examiner Hektoen: We will be in order, please.

This is a formal hearing in the matter of Polish National Alliance of the United States of North America, and office Employees' Union No. 20732, American Federation of Labor. The Case Number is XIII,C-1692.

The Trial Examiner appearing for the Board is Josef L. Hektoen and the appearances as I have them are Lester Asher and Robert T. Drake for the Board; Casimir E. Midowicz and Ewart Harris for the Respondent; and S. G. Lippman for the Union.

[fol. 3]

### **OFFERS IN EVIDENCE**

Mr. Asher: Will you mark these Board's Exhibits Nos. 1 to 7, for identification, please?

(Thereupon, the documents above referred to were marked "Board's Exhibits Nos. 1 to 7," for identification.)

Mr. Asher: If the Examiner please, I have had marked as Board's Exhibits Nos. 1 to 7, both inclusive, for identification, the formal documents in this proceeding. These formal documents are as follows:

Board's Exhibit No. 1 is the complaint and notice of hearing issued on March 9th, 1942, by Charles A. Graham, Regional Director for the Thirteenth Region of the National Labor Relations Board, together with the third amended charge which was filed by Office Employees' Union No. 20732, A. F. of L., in the Thirteenth Regional Office of the National Labor Relations Board on March 9th, 1942.

Board's Exhibit No. 2 is the affidavit as to service of the complaint, notice of hearing and third amended charge upon the parties to this proceeding.

Board's Exhibit No. 3 is the amendment to complaint issued on March 12th, 1942 by the Regional Director for the Thirteenth Region, together with the fourth amended [fol. 4] charge which was filed by Office Employees' Union No. 20732, A. F. of L. in the Thirteenth Regional Office on March 11th, 1942.

Board's Exhibit No. 4 is the affidavit as to service of the amendment to complaint and fourth amended charge upon the parties to this proceeding.

Board's Exhibit No. 5 is the order issued on March 19th, 1942 by the Regional Director transferring the place of the hearing.

Board's Exhibit No. 6 is the affidavit as to service of the order transferring the place of hearing upon the parties to this proceeding.

Board's Exhibit No. 7 is the answer of the Respondent, Polish National Alliance of the United States of North America, which was filed in the office of the Thirteenth Region of the National Labor Relations Board on March 20th, 1942.

If the Examiner please, I offer these documents in evidence as Board's Exhibits Nos. 1 to 7, both inclusive.

Trial Examiner Hektoen: Any objections?

Mr. Harris: No objection.

Trial Examiner Hektoen: Very well, they may be admitted.

(The documents above referred to, heretofore marked for identification "Board's Exhibits Nos. 1 to 7," were received in evidence.)



**Trial Examiner Hektoen:** Proceed.

**Mr. Asher:** If the Examiner please, I ask that Board's Exhibit No. 8 be reserved for the certified copy of the order designating the Trial Examiner in this proceeding. As yet—there has been a change in the assignment and I have not received the official assignment of the Trial Examiner. I ask that Board's Exhibit No. 8 be reserved for that purpose.

**Trial Examiner Hektoen:** That may be done.

**Mr. Asher:** If the Examiner please, at this time I request that we be in recess for about fifteen minutes so I can dis-[fol. 5] cuss with counsel for Respondent certain matters with respect to previous stipulations on some of the issues of the case.

**Trial Examiner Hektoen:** Very well.

**Mr. Asher:** I think we can conserve time by a short recess at this period.

**Trial Examiner Hektoen:** We will be in recess for fifteen minutes.

(A short recess was taken.)

**Trial Examiner Hektoen:** We will be in order, please.

**Mr. Asher:** I ask that this document be marked as Board's Exhibit No. 9, for identification.

(Thereupon, the document above referred to was marked "Board's Exhibit No. 9," for identification.)

**Mr. Asher:** I have had marked as Board's Exhibit No. 9 the annual statement for the year ended December 31, 1941 of the condition and affairs of the Polish National Alliance. I offer the document in evidence, Mr. Examiner, as Board's Exhibit No. 9.

**Mr. Harris:** No objection, sir.

**Trial Examiner Hektoen:** It may be admitted.

(The document above referred to, heretofore marked for identification "Board's Exhibit No. 9," was received in evidence.)

**Mr. Asher:** It is stipulated and agreed by and between counsel for the Board and counsel for the Respondent that the document which has been received in evidence as Board's Exhibit No. 9 has been filed in the twenty-six States in which the Respondent is licensed to do business. Is that agreeable, Mr. Harris?

Mr. Harris: Yes.

Mr. Asher: Will you mark this Board's Exhibit No. 10, for identification, please.

(Thereupon, the document above referred to was marked "Board's Exhibit No. 10," for identification.)

Mr. Asher: I have had marked as Board's Exhibit No. 10, a manual containing general information, premium rates and an analysis of the value of certificates of insurance for [fol. 6] both adult and juvenile members of the Respondent. I offer the document in evidence, Mr. Examiner as Board's Exhibit No. 10.

Mr. Harris: No objection, sir.

Trial Examiner Hektoen: Very good, it may be admitted.

(The document above referred to heretofore marked for identification "Board's Exhibit No. 10," was received in evidence.)

Mr. Asher: It is stipulated by and between counsel for the Board and counsel for the Respondent that the document which has been received in evidence as Board's Exhibit No. 10, is the current manual of the Respondent. Is that agreeable, Mr. Harris?

Mr. Harris: Yes.

Trial Examiner Hektoen: Very good.

Mr. Asher: Mark this Board's Exhibit No. 11 for identification, please.

(Thereupon, the document above referred to was marked "Board's Exhibit No. 11," for identification.)

Mr. Asher: I have had marked as Board's Exhibit No. 11 for identification, an ordinary life certificate specimen which is used by the Respondent. I offer the document in evidence as Board's Exhibit No. 11.

Mr. Harris: No objection, sir.

Trial Examiner Hektoen: Very good, it may be admitted.

(The document above referred to heretofore marked for identification "Board's Exhibit No. 11" was received in evidence.)

Mr. Asher: It is also stipulated by and between counsel for the Board and counsel for the Respondent that the document which has been received in evidence as Board's Exhibit No. 11 is currently in use.

Mr. Harris: It is.

Trial Examiner Hektoen: Very good.

Mr. Asher: I would like to call Mr. Walter Andrzejewski.

[fol. 7] WALTER JOHN ANDRZEJEWSKI, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Asher:

Q. What is your name?

A. Walter John Andrzejewski.

Q. Spell that last name for the Reporter, please, Mr. Andrzejewski?

A. A-n-d-r-z-e-j-e-w-s-k-i.

Q. Where do you live, Mr. Andrzejewski?

A. 4900 Hutchinson Street, Chicago.

Q. How old are you?

A. Forty-two.

Q. Are you a certificate holder in the Polish National Alliance?

A. Yes, for over twenty-five years.

Q. Have you ever worked at the offices of the Polish National Alliance?

A. Yes, sir.

Q. Where is the office of the Alliance located?

A. 1514 to 20 West Division Street, Chicago, Illinois.

Q. Does the Alliance have any other office?

A. No, that is the home office.

Q. When did you start working at the office of the Alliance?

A. In February, 1936.

Q. How long did you work there?

A. Up to the time of the strike on October 7th.

Q. October 7th of what year?

A. 1941.

Q. What was your job while you worked at the offices of the Alliance?

A. I started as a correspondent in the mortuary department, and then a few months later I was transferred to Doctor Dulak's, the medical director's department to help him in organizing the underwriting department.

Q. Mr. Andrzejewski, will you spell the name of the Doctor before you proceed any further?

A. Doctor Frank A. Dulak, D-u-l-a-k.

Q. How long did you work in this mortuary department?

A. About six or seven months.

[fol. 8] Q. Will you tell us what your work was in the mortuary department?

A. Corresponding to the various groups. We had claims, mortuary claims filed in our department and any discrepancies or any omissions that were sent in, we naturally correspond with the various lodges that submitted claims.

Q. By mortuary claims you mean death claims?

A. Death claims, yes, sir.

Q. Where did these death claims come from?

A. They came from all States of the Union, from the twenty-six States where we do business.

Q. Now, after you left the mortuary department you say you went over with Doctor Dulak in the underwriting department, is that correct?

A. Yes, sir.

Q. Tell us what work you did as an underwriter?

A. Well, at first we filed the system of rejections whereby we classified all risk selections. We first made a record of all the rejected applications in the prior years so that in the future the new applications that came in were filed against this record and then very often we got applications that were fraudulent. And other duties of that department were to answer correspondence to various organizers who submitted applications. Sometimes, very often omissions were made on the applications, or if a risk was submitted that was sub-standard we either rejected the risk, that is I would refer the application to the medical director and the medical director rejected the risk. If an application was a sub-standard case, by this I mean, we very often—in most of the cases we got credit reports from Retail Credit Company, and that was part of the exhibit given to the medical director with the application. If the case was a sub-standard case—

Mr. Harris: If the Examiner please, is it necessary to go into the details of his position?

Trial Examiner Hektoen: I do not know—

Mr. Harris: I do not see what relevancy it has to any issues here.

Trial Examiner Hektoen (Continuing): —what Mr. Asher has in mind.

[fol. 9] Mr. Harris: It is a very long record we are making on a lot of stuff that does not seem to be material.

Mr. Asher: I think it is very material both as to the particular work this man did and general work done in the office. There is a contest here that there is no jurisdiction in the Board and I think all of the facts we can get with respect to the operations of the Respondent, with respect to the operations of the people who work in the office are very material.

Trial Examiner Hektoen: Is this man's testimony a part of your proof on commerce?

Mr. Asher: Yes.

Trial Examiner Hektoen: I think you can go ahead on that basis.

The Witness: Most of the cases that were sub-standard were sent down to the Lincoln National Life Insurance Company in Fort Wayne, Indiana. By sending it out there—I mean photostatic copies made of the application and photostatic copy of the inspection report, and the application for re-insurance were submitted and then the Lincoln National Life Insurance Company quoted a rate. This rate was quoted to the members submitting—I mean the applicant submitting for membership. And then after the acceptance of that rate a policy would be issued to the member and a re-insurance policy would be mailed to the Lincoln National Life Insurance Company at Fort Wayne, Indiana.

By Mr. Asher:

Q. Mr. Andrzejewski, does the Polish National Alliance admit any social members?

A. No, sir.

Mr. Harris: Just pardon me. I do not understand the term "admit social members". What are social members?

Mr. Asher: Well, we will clarify it.

Mr. Harris: Are you referring to the insurance department or the Alliance generally?

By Mr. Asher:

Q. Will you, Mr. Andrzejewski, tell us what you mean by social members?



A. A member—formerly, prior to 1939, I believe 1939, in fact we stopped accepting social members I believe in 1938. By that I mean he is not an insured member of the [fol. 10] Polish National Alliance. That has been stopped sometime in 1938.

Q. And since 1938 to be a member of the Polish National Alliance you have to be an insured member?

A. Insured member, yes, sir.

Q. I call your attention in Exhibit A, which is a part of Board's Exhibit No. 7, the constitution and by-laws of the Alliance which is attached to their answer, on pages 5 and 6 there is a discussion of beneficial members and of social members. Is that the social membership that you have been talking about?

(Passing exhibit to the witness.)

A. This has reference to a social member that has been formerly accepted. I believe there are only about 600 now in the organization.

Q. And since 1939 they are no longer accepted?

A. No. When the constitution was revised we had no social members.

Trial Examiner Hektoen: This constitution is not the last one then, is that right?

Mr. Harris: Yes, it is.

Trial Examiner Hektoen: Oh, it is?

Mr. Harris: Yes, sir. Our last convention, Mr. Examiner, was in 1939 and this is the constitution.

Mr. Asher: I merely call the Examiner's attention to Section 9 of page 5, which says:

"No social membership admitted into the Alliance."

Mr. Harris: That would answer it. I do not know why all these questions.

By Mr. Asher:

Q. Now, you were telling us about re-insurance. With whom is this re-insurance made?

A. With the National Life Insurance Company of Fort Wayne, Indiana.

Q. And where are all of the documents for re-insurance sent?



A. They are sent from our home office to the Lincoln National Life Insurance Company at Fort Wayne.

[fol. 11]. Q. Now, is the re-insurance for all of the amount of the application or for part, of what is generally the re-insurance procedure?

A. There is no set rule. At times we may re-insure half of the insurance applied for; at times the full amount. For instance, we may have some applications coming in for \$5,000 of insurance. As a rule we will re-insure everything above \$1,500.

Q. And does the applicant receive a certificate from the Alliance or does he receive some sort of certificate from the Lincoln National Life Insurance Company?

A. No, the applicant does not know anything about this re-insurance arrangement. The applicant only receives the official Polish National Alliance certificate.

Q. Do you know, Mr. Andrzejewski, about how much there is in insurance which is covered by the Lincoln National Life Insurance Company?

A. Well, approximately, I would not know definitely now because I have not been at the office, but I would say around \$300,000.

Q. About \$300,000 of the amount of certificates issued by the Alliance is re-insured with the Lincoln National Life Insurance Company, is that correct?

A. Yes, sir.

By Mr. Harris:

Q. As of what date, Mr. Andrzejewski is that, as of what date?

A. Well, I would not—

Q. Well, when you went out, is that what you mean?

A. No. The amount of—

Q. Just answer what date, that is all.

A. I was just making a rough—I could not make it definite.

By Mr. Asher:

Q. Just approximately.

A. Between \$250,000 and \$300,000.

Q. Suppose that the applicant cannot even qualify for re-insurance at the Lincoln National Life Insurance Company, Mr. Andrzejewski, then what happens?

A. We reject the applicant. The application is submitted to the medical director and then the medical director rejects the case and we inform the organizer that his application for insurance and membership are rejected.

Q. Now, you mentioned something about reports. Would you tell us what you meant by that?

A. What?

[fol. 12] Q. You mentioned reports, inspection reports.

A. Oh, inspection reports. An inspection report is a character report, character and financial report, reported by Retail Credit Company. This is an organization with the home office in Atlanta, Georgia and branches all over the—well, all over the hemisphere.

Q. You mean this Retail Credit Company?

A. Yes, sir.

Q. Has its home office at Atlanta?

A. Atlanta, Georgia.

Q. Proceed.

A. And the application, rather an inquiry form would be filled out and sent to the branch office closest to where the member applies for insurance. For instance, if the application came from McKeesport, Pennsylvania, the closest branch office would be Pittsburgh.

Q. The closest branch office of what?

A. Of the Retail Credit Company would be in Pittsburgh, Pennsylvania. Therefore, we would mail our inquiry to Pittsburgh, Pennsylvania and the reports would come back from Pittsburgh to our home office in Chicago.

Q. Who makes the request for this inspection report?

A. The underwriting department.

Q. In Chicago?

A. In Chicago, yes, sir.

Q. What does this inspection report cover?

A. It covers the full report as to the person's character and his financial standing.

Q. You say that this request for report is sent directly to the closest branch office of the Retail Credit Company?

A. Yes, sir.

Q. And where does the report go to?

A. From the Retail Credit branch office to the home office in Chicago, Illinois.

Q. Do you know what rate is paid by the Alliance for these reports?

A. There are various rates. The rates are from \$1.00 to \$2.00. A small country town is a dollar; a little larger town it is \$1.25; like Chicago, St. Louis, Pittsburgh, Buffalo, \$1.50 and New York and suburbs \$2.00.

[fol. 13] Q. I show you Board's Exhibit No. 9 which is the annual statement, and call your attention to item 21 on page 3 which says:

"Inspection of risks \$4,384.65."

Would you know what that item covers?

A. Well, that covers the amount we spend for inspection reports to Retail Credit Company.

Q. Does the Polish National Alliance, Mr. Andrzejewski pay out commissions to any persons?

A. Well, we pay commissions to—I mean the Polish National Alliance pays out commissions to all field workers, organizers, writing the memberships to the Polish National Alliance.

Q. What kind of organizers are there?

A. Well, there are—I am not certain how many we have of full time organizers, but I am quite sure between twenty-five and thirty full time organizers, and perhaps over two hundred part time organizers.

Q. What kinds of commissions does the Alliance pay?

A. On an average about fifty per cent of the first annual premium. The full time organizers get advance commissions and they also get a portion of the business written by the part time organizers in their allocated districts. By full time organizers I mean district organizers. He has a certain district with part time organizers under his jurisdiction.

Q. Where are these various organizers located?

A. In all States where we do business. That is in most of the States. Some of the States we have no full time men.

By Trial Examiner Hektoen:

Q. Do you do business in twenty-six States?

A. Pardon me?

Q. Do you do business in twenty-six States?

A. Yes, sir.

Trial Examiner Hektoen: I see.

By Mr. Asher:

Q. Now, Mr. Andrzejewski, in addition to the manual of rates which is Board's Exhibit No. 10, does the Alliance issue any pamphlets or literature with respect to its certificates of insurance?

[fol. 14] A. Yes, we do. Very occasionally we mail out to organizers and lodges pamphlets explaining the different insurance certificates and comparing our certificates with the various insurance companies.

Q. How often are such pamphlets sent out?

A. I would not know definitely how often, but I would say every second month or so.

Q. To whom are they sent out?

A. They are sent out to the organizers and lodges, different lodges all over the country where we do business.

Q. Have you ever seen a booklet or book called "The Alliance Almanac"?

A. Yes, sir.

Q. What sort of publication is that?

A. It is an official almanac having a lot of advertisements and news and Polish literature. It is a calendar.

Q. Do you know how big it is?

A. Polish Historical Events, and so on.

Q. About how big is it?

A. Well, it runs between 250 and 300 pages.

Q. Would you tell us how that almanac is distributed?

A. It is sold at 50 cents per copy and it is mailed—that is, I think that was the price over a period of years—and it is mailed to different parts of the country. Wherever a subscription is sent in.

Q. Mr. Andrzejewski, are you familiar with the printed minutes and proceedings of the board of directors of the Alliance?

A. Yes, sir.

Q. Where did the board of directors meet?

A. They meet at the home office at 1514 to 20 West Division Street in Chicago.

Q. How often does the board of directors meet?

A. Twice a month.

Q. Now, are the minutes of their proceedings printed up?

A. Yes, sir.

Q. Now, how often are they printed up?

A. I believe twice a month, right after each meeting.

Q. What sort of a document is made up of those proceedings?

A. It is printed, printed copy, printed pamphlet consisting on an average of about, I would say, 64 pages.

Q. How is this printed document distributed?

A. Every member of the board of directors and every commissioner and member of the supervisory council gets a copy of it, and then copies were sent out to all presidents of councils all over the country.

Q. Now, you mentioned commissioners. Who are commissioners of the Alliance?

A. There are sixteen commissioners, one vice-commissioner and two lady commissioners, a censor and a vice-censor. They constitute the board of—rather the supervisory council.

Q. How many all together are there on this supervisory council?

A. Twenty-one.

Q. And you say all of these twenty-one people receive these copies of the printed minutes of the board of directors?

A. Yes, sir.

Q. Now, how many of these twenty-one persons who are on the supervisory council reside outside of the State of Illinois?

A. All but three.

Q. Then you also mentioned that these printed records of minutes of the board of directors are sent to presidents of councils, is that correct?

A. Yes, sir.

Q. What do you mean by that?

A. Well, we have about 190 councils. In each council we have various numbers of lodges, some of them as high as 30, 32, others only just a few. And there is a president of each council. In other words, we have about 160 councils outside of the State of Illinois.

Q. The president of each of these councils receives a copy of these printed board of directors minutes?

A. Yes, sir.

Q. You said there was a total of about 190 councils?

A. 190 councils.

Q. And 190 presidents of councils, is that correct?

A. Yes.



Q. How many of these presidents of councils reside out of Illinois?

A. I would say about 160. I did not check on that number.

[fols. 16-44] Q. That is your approximation?

A. Very close to it.

[fol. 45] By Mr. Asher:

Q. Are you a reader of the Polish Daily Zgoda?

A. Yes, sir.

Q. To get back, Mr. Andrzejewski, this Weekly Zgoda, of which we introduced a masthead as Board's Exhibit No. 19, how often does that appear?

A. The weekly appears once a week. That is mailed to all members of the Polish National Alliance.

Q. As of what date in the week is it dated?

A. The members, as a rule, receive their papers on a Thursday of each week.

Q. Is it dated Thursday, or is it dated some other day?

A. It is dated Sunday. That is, the Thursday preceding Sunday, I meant.

Q. You mean you receive it on Thursday preceding the Sunday upon which it is dated?

A. Upon which it is dated, yes, sir.

Mr. Asher: I ask that this be marked Board's Exhibit No. 21, for identification.

(Thereupon, the document above referred to was marked "Board's Exhibit No. 21," for identification.)

Mr. Asher: I have had marked Board's Exhibit No. 21, for identification, a masthead of the Polish Daily Zgoda. I offer the document in evidence as Board's Exhibit No. 21.

Mr. Harris: No objection, sir.

Trial Examiner Hektoen: It may be admitted.

(The document above referred to heretofore marked for identification "Board's Exhibit No. 21" was received in evidence.)

By Mr. Asher:

Q. I show you, Mr. Andrzejewski, what has been marked Board's Exhibit No. 21; can you give me the literal translation of the "Dziennik Zwiazkowy"?



A. Well, Alliance Daily.

Q. Will you give me, spelling it out in English, the Polish name of the Polish National Alliance?

A. The Polish National Alliance?

Q. Yes, in Polish:

A. Związek Narodowi Polski.

[fol. 46] Q. Now, just spell that out for us.

A. Z-w-i-a-z-e-k N-a-r-o-d-o-w-i P-o-l-s-k-i.

Q. The second word in the masthead, Board's Exhibit No. 21, means "of the Alliance" or something of that kind?

A. Yes.

Q. What does it mean?

A. This here, that means Alliance.

Q. Showing you Board's Exhibit No. 21, will you tell me what the emblem is in the middle between the two words?

A. That is an exact duplicate of the emblem I have got right here. That is the official emblem of the Polish National Alliance.

Q. Tell me, who is the editor of the Polish Daily Zgoda?

A. The editor of the Daily is Mr. Karol Piatkiewicz.

Q. That is the same as the Weekly Zgoda?

A. Yes, sir.

Q. Will you tell me who is the manager of the Polish Daily Zgoda?

A. Mr. Stanley Swierczynski.

Q. The same manager as of the Weekly Zgoda?

A. Yes, sir.

Q. You say you are a reader of the Polish Daily Zgoda?

A. Yes, sir.

Q. Where do you buy it?

A. The daily is on the stands.

Q. The news stands in Chicago?

A. Yes.

Q. Have you seen it on news stands outside of Chicago?

A. Yes, I saw the papers in Indiana on the news stands, Gary, East Chicago, Hammond.

Q. Hammond, Indiana?

A. Hammond, Indiana. I believe they are also on the stands in Detroit.

Q. Does the Polish Daily Zgoda have a wire service?

A. Yes, the United Press.

Q. Does the Polish Daily Zgoda publish several editions that you know of?

A. Yes. For instance, the country edition is sent out to Indiana. Our trucks deliver them there. We omit some of the news items pertaining to the Chicago districts and insert news items pertaining to Indiana.

[fols. 47-87] Q. For instance, different lodge meetings and activities?

A. Yes.

Q. What days of the week is the Polish Daily Zgoda printed?

A. What date?

Q. What days of the week?

A. What days of the week? Oh, all days of the week except Sunday, six days a week.

Mr. Asher: It is stipulated and agreed between counsel for the Board and counsel for the Respondent that the Alliance Almanac for 1941, which is the latest Almanac, carries within it on page 205, an ad in Polish, the translation of which is as follows:

"Dziennik Zwiazkowy, published by Polish National Alliance—largest Polish organization in the world—single number three cents, Saturday edition five cents, annual rate out of town \$5.00, Saturday edition included, \$6.50, Saturday edition only \$2.50."

[fol. 88] JOSEPH GAJDA, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct examination:

Q. While you were in the auditing department, there has been a little confusion, what do these auditors do?

[fols. 89-102] A. Well, as monthly reports come back from the different lodges of the P.N.A. the auditors recheck the reports and correct all mistakes that are made by the different secretaries in the lodges, and also make all of the different changes that come up on a report.

Q. What sort of information is there on these reports?

A. You have first of all the lodge number, then you have city and state, you got name of the member, his amount of insurance, his date of entry, his date of the expiring of

the certificate if it is 20 year term, 20 year payment, monthly premium, annual premium, or whatever it happens to be.

Q. These auditors check the various reports?

A. That is right.

[fols. 103-104] / JOSEPH LOPATOWSKI, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination:

[fol. 105] Q. Have you ever worked in the office of the Alliance, the Polish National Alliance?

A. It was in 1938 I came back to work in the offices of—in the home office of the Polish National Alliance.

Q. What was your job in the office?

A. Well, they gave me a job as shipping clerk and all around man. I worked there for about two or three months, then they promoted me to be correspondent in the loan department.

Q. You were handling correspondence with respect to loans?

A. I handled the correspondence in connection with the loans made on the certificates.

Q. Where do these applications for loans come from?

A. They came from all over the country, from all of the States the P.N.A. does business with.

Q. And these are applications for loans on certificates?

A. Yes, sir.

Q. And you would handle the correspondence with these people?

A. Yes. Yes, I handled the correspondence and I took care of loan applications. I made out the applications and prepared them and when the application was ready for check—when the checks were supposed to be made I gave them to Mr. Niemiec because he was in charge of the department and he made out the checks and made them to their members.

[fols. 106-197] Q. Do all applications for loans come through the Chicago office?

A. Yes, they all have to come to the main office.

Q. And all of the checks go out from the Chicago office on loans?

A. All of the checks are sent out from the main office to the secretaries of the groups.

[fol. 198] Mr. Asher: I have had marked, Mr. Examiner, as Board's Exhibit 35 for identification a stipulation which has been entered into between counsel for the Board and counsel for Respondent with respect to certain of the facts as to the business of the Respondent. I offer the document in evidence as Board's Exhibit 35.

Mr. Harris: That is our stipulation.

Trial Examiner Hektoen: It may be admitted.

(The document heretofore marked "Board's Exhibit No. 35," for identification, was received in evidence.)

Mr. Asher: I have had marked as Board's Exhibit No. 36 for identification a statement which has been prepared at my request by respondent, showing the number of certificates and the amount of insurance in force as of December 31st, 1941, divided as to the places in which the Respondent is licensed to do business.

Trial Examiner Hektoen: 26 states.

Mr. Asher: It is 26 states, the District of Columbia, and Manitoba, Canada.

I offer the document in evidence as Board's Exhibit No. 36.

Mr. Harris: No objection.

Trial Examiner Hektoen: It may be admitted.

(The document heretofore marked "Board's Exhibit No. 36," for identification, was received in evidence.)

Mr. Asher: I have had marked as Board's Exhibit No. 37 for identification a statement which has been prepared by the Respondent showing traveling expenses out of the State of Illinois during the year of 1941. This document has been prepared at my request as an explanation of Item 19 of the annual report, which covers field supervision and traveling expenses. Board's Exhibit 37 for identification shows merely the portion of that item for outside the State of Illinois.

Trial Examiner Hektoen: Does this tell you what was spent for traveling exclusively outside of the State of Illinois, or does it include travel getting to the border [fol. 199] of Illinois, and getting back, and so on? It covers the whole trip, I suppose.

Mr. Bronars: It does.

Trial Examiner Hektoen: It includes the travel from Chicago and return. Well, it may be admitted without objection.

(The document heretofore marked "Board's Exhibit No. 37" for identification, was received in evidence.)

Mr. Asher: I have had marked as Board's Exhibit No. 38 for identification a statement prepared by the Respondent showing advertising, printing, and stationery expenses outside of the State of Illinois during the year 1941. This statement was prepared by the Respondent at my request as a breakdown of Item 29 of the Annual statement, which covers advertising, printing and stationery costs for the year 1941. Board's Exhibit No. 38 for identification covers that portion of the advertising, printing and stationery which was for outside the State of Illinois.

Is that correct, Mr. Harris?

Mr. Harris: If the Examiner please, I am informed that Board's Exhibit No. 38 shows the advertising and printing outside of the State of Illinois. That is what you were asking?

Trial Examiner Hektoen: For what purpose, to advertise what?

Mr. Harris: Membership campaigns.

Trial Examiner Hektoen: The stationery was used for the same purpose?

Mr. Harris: Yes.

Trial Examiner Hektoen: It may be admitted without objection.

(The document heretofore marked "Board's Exhibit No. 38," for identification, was received in evidence.)



[fol. 200] JAMES M. ALGOZINO, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Asher:

Q. State your name.

A. James M. Algozino.

Q. Where do you live, Mr. Algozino?

A. 732 West 62nd Street, Chicago, Illinois.

Q. What is your occupation?

A. Business representative, Office Employees Union, Local 20732.

Q. As a business representative of the Office Employees Union, did you have occasion to take part in a conference with officials of the Polish National Alliance?

A. Yes, we did. On March 26th, 1941, we had a conference.

Q. Would you know whether that was the first time that any representative of the union approached an official of the company?

A. Yes, that was the first time.

Q. You were present at that conference?

A. Yes, sir.

Q. Who else was present at the conference?

A. Mr. Ackerman, who at that time was business representative of the same local.

[fol. 201] Q. Who else was present?

A. Mr. Rozmarek and Mr. Midowicz of the Polish National Alliance.

Q. Tell us what took place at that conference.

A. Mr. Ackerman advised Mr. Rozmarek and Mr. Midowicz that the Office Employees Union represented a majority of the office employees of the Polish National Alliance, and we were there to obtain union recognition on behalf of these people.

Mr. Rozmarek replied that he knew that the union did not represent the majority of these people and that if the union represented anyone at all, it was a small group of dissatisfied, disgruntled drones, as he put it.

Mr. Ackerman then asked Mr. Rozmarek if he thought that were true, he would consent to an election to determine whether or not we represented a majority.



Mr. Rozmarek said he would not consent to an election and that he contended—even if the union did represent a majority of the office employees of the Polish National Alliance, he would not recognize the union anyway.

That was about all.

Q. Did he say why he wouldn't recognize the union?

A. Well, he said that he thought that Polish National Alliance being a fraternal organization did not come within the scope of the National Labor Relations Board.

Mr. Asher: That's all, Mr. Harris.

Mr. Harris: No cross.

Mr. Asher: The Board rests.

[fol. 202]

#### OFFERS IN EVIDENCE

-Mr. Harris: If the Examiner will give us about five minutes, I may be able to shorten the proof on certain documents I want to submit to counsel.

Trial Examiner Hektoen: We will have a five minute recess.

(A short recess was taken.)

Trial Examiner Hektoen: We will be in order, please.

Mr. Harris: If the Examiner please, I desire to offer in behalf of Respondent the original, that is a certified copy of the charter of the Polish National Alliance of the United States of North America, being the Respondent in this case, as Respondent's Exhibit No. 1.

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 1," for identification.)

Mr. Asher: I have no objection to that, Mr. Examiner.

Trial Examiner Hektoen: It may be admitted.

(The document heretofore marked "Respondent's Exhibit No. 1," for identification, was received in evidence.)

Mr. Harris: We ask leave, if the Examiner please, to withdraw these originals we are offering in evidence and substitute true copies thereof.

Mr. Asher: No objection, Mr. Examiner.

Trial Examiner Hektoen: That may be done.

Mr. Harris: We now offer in evidence as Respondent's Exhibit No. 2 the certified copy of the amendments to the articles of incorporation of Respondent, Polish National Alliance of the United States of North America, under which amendments at the time of the happenings in this case and now, the Respondent is operating.

(The document above referred to was thereupon marked as "Respondent's Exhibit No. 2," for identification.)

Mr. Asher: No objection.

Trial Examiner Hektoen: It may be admitted.

(The document heretofore marked "Respondent's Exhibit No. 2," for identification, was received in evidence.)

[fol. 203] Mr. Harris: We offer in evidence as Respondent's 338 Exhibit No. 3, the official constitution and by-laws of Respondent, which are attached as an exhibit to our answer, but for the convenience of the Board and the Examiner we offer these as separate exhibits.

Trial Examiner Hektoen: I think that their being attached to the answer would be sufficient for your purpose.

Mr. Harris: All right, sir.

Trial Examiner Hektoen: I suggest you withdraw that offer.

Mr. Harris: I withdraw the offer on the statement of the Examiner.

The Respondent asks the Trial Examiner to take judicial notice of Article XVII of the Illinois Insurance Code 1913, which is now Chapter 73 of the Revised Statutes of Illinois, the code being compiled under the direction of the Department of Insurance, and Article XVII, containing Sections 282 to 315, inclusive, and we are calling particular attention of the Examiner to Sections 282 to 285, inclusive, Section 288, 289, 294, sub-paragraph B of 296, Section 298, and Section 301.

We ask to submit the sections I have just mentioned and which have been typewritten as copies from the Code as our exhibit in this case.

Mr. Asher: You are offering this as Respondent's Exhibit No. 3?

Mr. Harris: Yes.

Mr. Asher: I have no objection to Respondent's Exhibit No. 3 as a matter of convenience, setting forth those

sections. I do, however, want it clear, Mr. Examiner, that on the basis of the request that the Examiner take judicial notice of the entire section which pertains to fraternal benefit societies, that I am protected in that being called to your attention, and that I can argue in briefs or to the Board any of the pertinent sections of the statute.

Trial Examiner Hektoen: Yes.

Mr. Harris: That is understood.

[fol. 204] Trial Examiner Hektoen: Then the exhibit may be admitted on that basis as Respondent's Exhibit No. 3.

(The document above referred to was thereupon marked as "Respondent's Exhibit No. 3," and was received in evidence.)

Mr. Harris: I desire to offer in evidence as Respondent's Exhibit No. 4 the original articles of incorporation of Alliance Printers & Publishers, Incorporated, with a request for leave to make a true copy and substitute that.

Mr. Asher: I have no objection, Mr. Examiner.

Trial Examiner Hektoen: The exhibit is admitted and the substitution may be made.

(The document above referred to was thereupon marked as "Respondent's Exhibit No. 4," and was received in evidence.)

Mr. Harris: Mr. Bronars.

JOSEPH C. BRONARS, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Harris:

Q. State your name.

A. Joseph C. Bronars.

Q. Where do you live?

A. 2257 North Sawyer.

Q. Chicago?

A. Chicago, Illinois.

Q. What official position, if any, do you hold with Respondent, Polish National Alliance?

A. I am the comptroller.

Q. That is spelled "c-o-m-p-t-r-o-l-l-e-r."

A. It is c-o-m-p-t-r-o-l-l-e-r.

Q. How long have you been comptroller?

A. I have been comptroller since the 1935 convention. Prior to that, I have been the auditor.

Q. How long have you been employed by the Polish National Alliance, Mr. Bronars?

A. Since 1929.

Q. What are your duties, briefly?

A. I am in charge of the accounting, the preparation of [fol. 205] the annual statement, all book-keeping, general book-keeping, and general supervision of the offices.

Q. How long have you been a member of the Alliance?

A. I have been a member of the Alliance for about 24 or 25 years.

Q. You are familiar, are you, Mr. Bronars, with the general setup and working arrangements of the Alliance?

A. I am.

Q. Just so that we get it very briefly, the Alliance consists of a number of lodges, does it?

A. That's right.

Q. These lodges are locally all over the United States, are they?

A. They are.

Q. And they consist of what?

A. Councils.

Q. No, the lodges.

A. Members.

Q. The members of the Alliance?

A. Yes.

Q. Coming to that, now, I call your attention to the phrase "social member." What is a social member?

A. A social member was originally a member who did not carry any insurance, but merely was a member and paid only a certain amount to the expense fund, 21 cents.

Q. I take it he had admission to your lodges, to your ritual, and so forth?

A. Yes.

Q. But he carried no benefit certificate?

A. That's right.

Q. Has there been a change in that status?

A. There has been.

Q. As to the admission of social members?

A. Yes.

Q. That was taken, was it, at the behest of the insurance department?

A. I believe so, yes.

Q. Now, as I understand it, no new social members are admitted is that right?

A. That's right.

Q. Will you tell us about how many social members there are who were in under the old regime?

A. Probably around 1,500.

Q. Mr. Bronars, what is the average size of a lodge, or is there any average size?

A. There is no average size of the lodge. They run from 25 to a thousand or more.

[fol. 206] Q. The lodge has its own officers, does it?

A. It has, yes.

Q. And a certain amount of independent action within the lodge, is that right?

A. The lodge has self-government.

Q. Self-government?

A. It rules itself.

Q. Are these lodges grouped into councils?

A. They are, yes.

Q. About how many lodges go to a council, or is it arbitrary?

A. It depends on the locality and the number of lodges within a certain radius of miles. Some councils have only two or three lodges, others have as high as 50 lodges.

Q. How does one become a member of the council?

A. By paying certain dues to the council.

Q. Are the lodges in a council, is that the whole lodge, or is that just certain persons who are delegates?

A. Delegates from the lodges constitute the council.

Q. And those delegates, are they elected?

A. They are elected by each lodge.

Q. Do the councils elect anyone?

A. The councils, their own officers.

Q. Yes, and anyone else?

A. As far as I know, that's all.

Q. What is the convention?

A. The convention consists of delegates elected by the membership through the councils on the basis of, I believe it is 600—one delegate for each 600 or major fraction thereof.

Q. 600 members?

A. Or major fraction.

Q. Or major fraction?

A. I am not sure about that.

Q. That is near enough. It is an elective body, is it?

A. It is an elective body.

Q. And it meets how often?

A. It meets every four years.

Q. And where does it meet?

A. It meets in the city designated by the previous convention.

{fols. 207-211] Q. And that city may be in various parts of the United States?

A. That city may be in various parts of the United States, yes.

Q. It has, has it not, the supreme power, legislative, judicial and executive, while it is in session?

A. It has, yes.

Q. Among the people who are elected by the convention, will you name the principal persons who come up for election?

A. The censor, the president, the general secretary, the treasurer, the two vice presidents, a woman vice president and a man vice president, the directors, eleven directors, three of which are out of the State of Illinois, and in addition to that, the commissioners are elected by the convention.

Q. Who are these commissioners?

A. The commissioners are what they call the supervisory council.

Q. They are the persons who form the supervisory council, is that right?

A. They are members of the supervisory council.

Q. Are they elected in the convention?

A. They are, yes.

Q. How often does the supervisory council meet?

A. They meet as often as the censor calls them together, or the majority of the commissioners request a meeting.

Q. Do they have, apart from a special call, any stated times of meeting?

A. I don't believe so. I am not sure of that.

Q. The convention, as I understand, meets once every four years, is that right?

A. That's right.



Q. Coming now to the president and the directors, where do they have their chief office?

A. In Chicago, Illinois.

[fol. 212] Q. Now, Mr. Bronars, do you know the school at Cambridge Springs?

A. I do.

Q. What is the name of that school?

A. Alliance College.

Q. How is that school maintained?

A. It is maintained by monthly contributions by members out of their dues.

Q. Do you have charge of the funds that are received?

A. I have, yes, sir.

Q. And you know of the disbursement of the funds?

A. I do.

Q. Briefly, what is the aim of the school, just what do they do there?

A. The aim of the school is to provide education for members, children of members, at a nominal fee, high school and college education.

Q. How big is the school?

A. The school is—what do you mean by that?

Q. In numbers.

A. Numbers of students?

Q. Students, yes.

A. You mean of students?

Q. The average number.

A. Right now there is about a hundred. There used to be as high as three hundred.

Q. I show you what I will ask to have marked Respondent's Exhibit No. 6 for identification.

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 6," for identification.)

By Mr. Harris:

Q. I show you now Respondent's Exhibit No. 6 for identification, and will ask you if at my request you have prepared a statement showing the disbursements for mortuary claims and various other activities, national purposes, relief purposes, commissions and departments, civic manifestations and memorials, being a record of the disburse-

ments of funds of the Alliance from the organization in 1880 to December 31st, 1940; did you prepare such a document?

(Handing document to witness.)

A. Yes, I had this prepared in my department.

[fol. 213] Q. Is respondent's Exhibit No. 6, for identification, the document in question?

A. Yes.

Q. And does this truly show from the records of the Polish National Alliance the disbursements?

A. It does, yes, sir.

Mr. Harris: I offer Respondent's Exhibit No. 6 for identification in evidence as Respondent's Exhibit No. 6.

Mr. Asher: Mr. Examiner, I object to the offer of Respondent's Exhibit No. 6 on the grounds it is immaterial and irrelevant to the issues in this case, doesn't cover any portion of the time with which we are involved in this case.

Mr. Harris: I was coming to that. If that is the only objection, we will be very happy to submit the figures for 1941, if the exhibit is otherwise admissible.

Mr. Asher: I think the entire exhibit, regardless of the amount of time covered, is entirely immaterial and irrelevant to the issues in this case.

Trial Examiner Hektoen: Mr. Harris, we have before us here a question of whether or not the Respondent, assuming it to be subject to the jurisdiction of the Board, has committed certain unfair labor practices. How does this list of disbursements from 1880 to 1940, even if it included 1941, aid us to arrive at any conclusion on that?

Mr. Harris: The exhibit is directed to the contention of the Respondent that it is not under the Act.

Trial Examiner Hektoen: A jurisdictional proposition?

Mr. Harris: Yes.

Trial Examiner Hektoen: Will you please tell me how it is to be considered as disproving the jurisdiction of the Board?

Mr. Harris: Yes. We are an organization not for profit, with our main object—

Trial Examiner Hektoen: This is tending to prove that?

Mr. Harris: That's right, our activities.

Trial Examiner Hektoen: What do you think about that, Mr. Asher?

[fols. 214-216] Mr. Asher: I don't think there is anything under the Act that in any way excludes jurisdiction over fraternal associations. I don't think the exhibit in any way bears upon the issue of the Board's jurisdiction.

Trial Examiner Hektoen: If Mr. Harris thinks it tends to uphold his contention on the jurisdiction, I think it ought to be admitted.

(The document heretofore marked "Respondent's Exhibit No. 6," for identification, was received in evidence.)

Mr. Harris: Your Honor, we will ask leave tomorrow to give the figures for 1941 on the same basis.

Trial Examiner Hektoen: Surely.

[fols. 217-222] Q. Who is J. Fafara?

A. J. Fafara is the organizer who looks after the membership to see that the commissions are paid to those who obtain the members.

Q. That is, if a person brings in a member and is entitled to commissions, Mr. Fafara's department takes care of that, is that so?

A. That's right.

Q. How many are there in Mr. Fafara's department in the office of the P. N. A.?

A. Offhand, I don't know. There is about three or four.

Q. Do you know what it consists of, I mean, what do they do there?

A. Well, they prepared the list of members, who the members are obtained by, and the compensation or the premium for the members.

Q. Do they have space in the office?

A. They have, yes.

Q. Does Fafara have a desk or an office?

A. He has, yes.

[fol. 223] Q. In your position of comptroller, Mr. Bronars, do you have occasion to audit the accounts of the Alliance Printers and Publishers, Incorporated?

A. I have, yes.

Q. Have you had occasion to do that ever since its incorporation?

A. I did.

Q. So that we get the history of this thing, before the incorporation of the Alliance Printers and Publishers, will

you state whether or not there was a printing and publishing department in the Polish National Alliance itself?

A. Yes, there was.

Q. For how long, if you know, had that gone on before the incorporation of the Alliance?

A. That has been going on for, I think it was since the start of the publication of the Daily, up to and including the incorporation of the Alliance Printers and Publishers.

Q. When was the start of the publication of the Daily, if you know?

A. I do not know exactly.

Q. Was it some years—

A. It was prior to my time.

Q. So that when you came, there was a daily?

A. It was already there.

Q. Did the department—what was that department called?

A. Printing Department, printing and publication department.

Q. Did that also publish a Weekly?

A. It did.

Q. The Weekly Zgoda?

A. It did, yes, it did.

Q. Was there a Weekly Zgoda when you came to work for the Polish National Alliance?

A. There was, yes.

Q. You were employed by the Polish National Alliance at the time of the incorporation of the Alliance Printers and Publishers, I think you said?

A. Yes.

Q. I call your attention to the fact that the first name of the Alliance Printers and Publishers was Corporation of Polish National Alliance of the United States of North America, Publications, was that the name that was given?

A. That was the original corporate name.

Q. And under that name it assumed a corporate entity, did it?

A. It did, yes.

Q. And that name was afterwards changed by amendment of the articles to Alliance Printers and Publishers, Incorporated?

A. That's right.

Q. From the time of the incorporation, which was apparently in 1933—is that right?

A. It was incorporated prior to the operations of the corporation. It did not start to operate until May 1st, 1934. It was incorporated prior to—

[fol. 225] Q. To its starting business?

A. That's right.

Q. All right, sir. After it began business as a corporation, did you have charge of the auditing of the accounts?

A. I did, yes.

Q. Will you state whether or not since 1934, the beginning of operations, the books and accounts of Alliance Printers and Publishers have been kept strictly separate from any books and accounts of the Polish National Alliance?

A. Yes, they have.

Mr. Asher: I am going to object, Mr. Examiner, as calling for a conclusion. If he wants to ask them if they have a separate set of books, all right.

Mr. Harris: That's all right.

Mr. Asher: If he starts saying "strictly separate", I am going to object.

Mr. Harris: That's all right. I will ask him if they have separate books.

Mr. Asher: I move to strike the answer.

Mr. Harris: No objection. The question is withdrawn. We have no objection to striking the answer.

Trial Examiner Hektoen: Very good.

By Mr. Harris:

Q. Will you state whether or not, after the inception of the corporation and its beginning activities in 1934, a separate set of corporate books and records was kept?

A. They were.

Q. And you are the man in charge of that, is that right?

A. Yes.

Q. Coming to the corporate structure, who holds the stock, if any, of the corporation?

Mr. Asher: I object, Mr. Examiner. I think we are again going into the material that is covered by our stipulation and by the documentary proof. Right now I think it is rather a misleading question. I don't know what corporation we are talking about.



Trial Examiner Hektoen: Who holds the stock in the Alliance Printers?

Mr. Harris: That is what I meant.

[fol. 226] Trial Examiner Hektoen: Isn't that shown to be held by the directors?

Mr. Harris: The question is preliminary, and it is simply to get the picture before you.

Trial Examiner Hektoen: All right.

Mr. Harris: I know there are certain things in the stipulation, but this will be brief.

By Mr. Harris:

Q. Who holds the stock?

A. The directors of the Polish National Alliance.

Q. By the way, the officers and directors of the Polish National Alliance are all directors of the Polish National Alliance?

A. That's right.

Q. There are fifteen persons?

A. Fifteen persons.

Q. As I understand the history of this thing, before 1941, sometime before 1941, that stock was held rather differently from the way it is now, is that right?

A. That's right.

Q. It was held in different proportions, is that right?

A. It was, yes.

Q. But at the present time, as we have stipulated, each director has three shares and the president has an extra five?

A. That's right.

Q. There is, I believe, a separate board of directors?

A. There is.

Q. And do you keep separate minutes of that board?

A. We do, yes.

Q. Now, who is the business manager of the Alliance Printers and Publishers?

A. Mr. Stanley Swierczynski.

Q. Was he the manager in March, 1941?

A. Yes, he was.

Q. With reference to the employees of the Alliance Printers and Publishers, who does the hiring and the firing?

A. Mr. Swierczynski.

Q. In his capacity as manager?

A. Yes.



Q. Just so we get the picture all together here, who appoints the manager?

A. The board of directors of the Alliance Printers and Publishers.

[fols. 227-228] Q. That is all governed by the by-laws of the Alliance, isn't it?

A. Yes.

Q. And it is in there?

A. Yes.

Q. Editorial staff, I believe, is appointed by the Censor?

A. That's right.

Q. While we are at it, just what is the Censor, just what is he?

A. The Censor is a more or less honorary position with the power to supervise the action of the board, and in case of any discrepancy or any action by the board which in his opinion is contrary to the constitution, he has the power to veto, which veto can be abolished by the board by a two-thirds majority.

[fol. 229] Cross-examination.

By Mr. Asher:

Q. Mr. Bronars, I believe you stated somewhere that there were eleven directors. Will you tell us how many directors there are of the Polish National Alliance?

A. That is a mistake. It should be ten.

Q. There were ten directors?

A. Eleven was a mistake. There were ten. There is five officers. There is the president, two vice-presidents, general secretary and treasurer, and there is ten directors.

Q. Then the total board of directors is made up of fifteen?

A. Fifteen all together.

Q. Five of whom are officers?

A. That's right.

Q. Ten being merely members of the board?

A. That's right.

Q. Out of these ten directors, how many reside out of the State of Illinois?

A. Three.

[fol. 230] Q. That is provided under the constitution?

A. Yes, three of them are required by the constitution to be elected from outside of the State.

Q. The school at Cambridge Springs, Alliance College, isn't that a separate corporation?

A. It is.

Q. Under what State, is that incorporated?

A. Pennsylvania.

Q. You have been telling us about the library. I call your attention, on Respondent's Exhibit No. 6, there is the statement that there has been spent over \$101,000 for the P.N.A. library in Chicago. Does that refer to this library in the basement of the P.N.A. building?

A. That's right.

Q. You don't have any other library in Chicago, do you?

A. No, we haven't got—what we do is give out books to libraries in Chicago as a donation.

Q. But this is—

A. That is principally the library that we have in the building.

Q. By this you meant the sum of \$101,000 refers to expenses in connection with the library in this building?

A. That's right.

Q. Mr. Fafara, he is in charge of the organizers throughout the country, is he not?

A. I don't know whether he—I don't think he is in charge. He is merely—he merely sends out pamphlets, he prepares pamphlets, prepares various rate books which he distributes to the different people that are working to get new members.

[fol. 231] Q. He prepares the literature which you send out throughout the country to your organizers?

A. That's right. He does that and he also takes care of the premiums, to see that the premiums are paid to these people that get new members.

Q. You mean commissions?

A. Their membership premiums.

[fol. 232] Q. As I understand it, Mr. Bronars, the publications used to be handled through a printing department in the Alliance itself.

A. That's right.

Q. When was it that that printing department was changed into a separate corporation?

A. The operations were started May 1st, 1934. The incorporation was formed prior to that time.

Q. Isn't that due to the fact that under your charter powers the Alliance cannot run a newspaper, that you had to set up a separate corporation?

A. I think that was the main reason for that.

Q. Getting back to Mr. Fafara, doesn't he go around and call on and give courses to various organizers and tell them what points to stress in getting memberships and insurance?

A. Not as a regular thing. He goes off and on.

Q. But he does do some of that work?

A. He spends most of his time in the office.

. . . . .

Re-direct examination.

By Mr. Harris:

Q. In these membership dues, Mr. Bronars, just how are they allocated between the general activities of the Alliance and the insurance or fraternal-benefit department?

A. The so-called per capita dues of 21 cents are allocated as follows: To the college three cents; the repayment of the loan—there was a loan made in 1939, authorized by the convention for the relief of Poland of \$150,000, and there was also allocated to repay that loan one cent per member per month out of the 21 cents; for the convention fund, one cent; for the official publication, two and one-half cents.

Q. That official publication—

A. That is the Zgoda.

Q. That is the weekly organ?

A. Weekly official publication. For the youth department, 2-3/16 of a cent; for the educational department, one-half cent; for the relief of the aged members, one cent; for the Polish Army invalids, one-eighth cent; for welfare one-[fol. 233] eighth cent; for the women's department, one-sixteenth cent; for the council relief and organization fund, one-half cent; for the administration, six cents; for the financial secretary, three cents—which makes a total of 21 cents.

Q. The rest of the membership due is applied on the——

A. On the mortuary.

Q. On the mortuary fund?

A. That's right.

Q. Just one other thing while you are speaking. The Zgoda, as I understand it, the subscription to this Zgoda is in the membership dues?

A. Yes, that's right.

Q. Have you a record, Mr. Bronars, of any sales to the public of the Zgoda?

A. I don't know of any.

Q. You don't know of any?

A. No.

Q. Now, does the Alliance Printers and Publishers Company do any work for the Polish National Alliance?

A. Yes, they do.

Q. What do they do?

A. They do practically all of our printing, printing of our membership certificates, printing of our pamphlets, printing of our letterheads, in fact all of our printing.

Q. And do they print the Zgoda?

A. They do.

Q. In the books of the Alliance Printers and Publishers is there reflected any amounts paid by the Polish National Alliance to the Alliance Printers and Publishers for such services?

A. There is.

Trial Examiner Hektoen: I have just one or two. Did you have some more, Mr. Harris?

Mr. Harris: No.

By Trial Examiner Hektoen:

Q. There has been testimony here by witnesses for the Board that they are a member of council so and so. What does that mean?

A. They are a member of the council, they belong to the lodge that belongs to that council, which is in that council. It may be also that they may be delegates to the council from the lodge, I don't know, but being members they can be members of the lodge in that council.

[fol. 234] Q. And then you refer to yourself as a member of that council?

A. That's right.

Q. I don't find in the constitution and by-laws, from a rather superficial examination, anything about the commissioners who form the supervisory council and who are elected by the convention. Can you tell me a little bit about that?

A. Yes.

Mr. Harris: We can give that to you in a minute.

Trial Examiner Hektoen: All right.

Mr. Harris: I call the Examiner's attention to Section 118 of Article 12 of the Constitution and by-laws.

Trial Examiner Hektoen: Thank you very much.

Mr. Asher: I think, Mr. Examiner, it is probably covered better, beginning at page 39, which starts "The supervisory Council".

Mr. Harris: Yes, that covers it, too.

Trial Examiner Hektoen: Maybe I can get it more easily by asking the witness.

Mr. Harris: All right, sir.

By Trial Examiner Hektoen:

Q. How many commissioners are there?

A. I think there is fifteen or sixteen, I am not sure of that.

Q. Fifteen or sixteen, and they form the supervisory council?

A. They do, yes.

Q. Is that the supreme body?

A. Between conventions, yes.

Q. Between conventions?

A. That's right.

Q. Is that the supervisory council which the Censor can overrule?

A. No. The supervisory council has the—the Censor is the chairman of that body, of the commissioners.

Q. It is a sort of supreme court?

A. It is, over the directors.

Q. But the directors can overrule its veto?

A. They can, yes.

Q. By a two-thirds vote?

A. That's right.

[fol. 235] Q. The editorial staff of the Alliance and the Publications is appointed by the Censor, you say?

A. That's right.

Q. Does he act with the advice and consent of the Supreme Council?

A. That's right. He submits the names to the council and they approve them or disapprove them. Pardon me. The board of the Alliance Printers, if I am not mistaken, I think it is provided there that they submit the names from applications submitted to the board, to the Censor, who submits that to the supervisory council for approval.

Trial Examiner Hektoen: Thank you very much.

Mr. Midowicz: May I be permitted to correct an erroneous impression which may have existed in the Examiner's mind. The board of directors is powerless to overrule any announcement of the supervisory council. The Censor can overrule the action of the board of directors, and his veto can be overridden by a two-thirds vote, but the supervisory council pronouncements are highest and not subject to any action of the board of directors, except to conform thereto.

Trial Examiner Hektoen: Thank you.

Mr. Asher: I don't know the significance of it. I would like to call the attention of Mr. Bronars and the Examiner to page 46 of the Constitution and By-laws, subsection (6), which says that the Censor appoints the chief editor of the publications of the Alliance from three candidates presented by the supervisory council.

The Witness: I am mistaken, then. Maybe that was the practice before that.

Mr. Harris: Yes.

The Witness: I am probably not familiar with the changes in the constitution.

Trial Examiner Hektoen: Thank you. That's all the questions I have, Mr. Bronars. You may step down.

[fol. 236] CHARLES ROZMAREK, a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Harris:

Q. What is your name?

A. Charles Rozmarek.



Q. Where do you live, Mr. Rozmarek?

A. 4019 West Wellington Avenue, Chicago.

[fol. 237] Q. What if any, is your official position with the Respondent, the Polish National Alliance?

A. President.

Q. And when were you elected president?

A. In the September convention of 1939.

Q. And thereafter you were duly installed and took office?

A. That is correct. I was installed the following month.

Q. In addition to the election of yourself, will you name the other officers of the Alliance who were elected with you at that convention? That is, the principal officers.

A. Peter Koslowski, vice-president; Marie Czyz, vice-president; Alvin Szczerbowski, general secretary; Michael Romaszkievicz, treasurer; M. W. Majchrowicz, director.

Q. I will not ask you for all of the directors, Mr. Rozmarek. There were altogether elected the ten in addition to the officers, were there not?

A. We had fifteen officers elected and also a high medical examiner. The high medical examiner is not a member of the board and he has no voice in the deliberations.

Q. And who is the medical officer?

A. Doctor Sampolinski.

Q. Now, in matters of importance affecting the policy of the Alliance who makes the decisions in the first place?

A. The convention.

Q. And now coming down to the day to day operation of the Alliance in Chicago, who makes the decision in the first place?

A. The routine business is conducted by the board. The Board meets twice a month and in the interim all important matters are disposed of by the executive committee consisting of myself, the treasurer and the general secretary.

Q. Now, in decisions of importance will you state whether or not it is the practice to refer whatever tentative decisions may be made by you or the executive committee to the board?

A. That is correct.

Q. Now, is there anybody or person that has any control or supervision of decisions taken by you and the board?

A. Yes. In the first instance the board minutes have to [fols. 238-306] be approved by the Censor of the Polish National Alliance.

Q. And that is Mr. Swietlik?

A. That is right.

Q. And if there should be a question of any further carrying any decision, to what body would it go?

A. A very important decision would have to be made by the supervisory council which is our highest body between the conventions.

Q. And for final decision you would go to the convention, would you?

A. That is correct.

Q. How often did the supervisory council meet since 1939?

A. The supervisory council met, I believe in 1939, in November of 1939 in Cambridge Springs, Pennsylvania, and it met in 1940, in September, 1940 in Chicago.

Q. At whose behest is the supervisory council called, who calls the supervisory council?

A. The Censor of the Polish National Alliance.

Q. You do not?

A. No.

Q. Now, coming now to your talk with Mr. Algozino on March 26th, I believe 1941, did you communicate the substance of that talk which has already been testified to by Mr. Algozino to the Board?

A. I had no talk with Algozino.

Q. No, it was Mr. Ackerman.

A. Algozino was in the office with Mr. Ackerman in Mr. Midowicz' office. I happened to be there, but during the whole period of his stay there I don't believe—all he said was hello and goodbye. Ackerman did all of the talking.

Q. All right. Was the substance of that conversation reported to the board?

A. That is correct.

Q. Did you receive any direction from the board to take any different action from what had been taken by you?

A. No.

Q. Now has there been—I think you said the last meeting of the supervisory council was 1940, that is right, is it not?

A. That is right.

[fol. 307]

## BOARD'S EXHIBIT No. 1

UNITED STATES OF AMERICA

Before the National Labor Relations Board

National Labor Relations Board Case No. XIII-C-1692

In the Matter of POLISH NATIONAL ALLIANCE OF THE UNITED  
STATES OF NORTH AMERICA

and

OFFICE EMPLOYEES' UNION No. 20732, A. F. of L.

## COMPLAINT

It having been charged by Office Employees' Union No. 20732, A. F. of L., hereinafter called the Union, that Polish National Alliance of the United States of North America, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act, the National Labor Relations Board, by the Regional Director for the Thirteenth Region, as agent for the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations—Series 2, as amended, for its Complaint against the respondent hereby alleges the following:

1. The respondent is a fraternal benefit society incorporated under the laws of the State of Illinois. The respondent has its main office in Chicago, Illinois.

2. The respondent is, among other things, engaged in (1) the operation of a death, disability, and accident insurance business, (2) the publication of a weekly newspaper and a daily newspaper, and (3) in the investment of its funds in real estate and a variety of securities. The respondent is licensed to conduct its insurance business in 26 states of the United States, in the District of Columbia, and in Manitoba, Canada, and it writes insurance, collects premiums, [fol. 308] and pays out benefits in all the states and territories in which it is licensed. The respondent's insurance business is managed and directed by its directors and of-

ficials located at its office in Chicago, Illinois. The newspapers which are published by the respondent are printed in Chicago, Illinois, and are circulated throughout the United States. The respondent's cash is kept on deposit in commercial banks in Illinois, Indiana, and Michigan. The respondent owns real estate mortgages and notes secured by real estate in Illinois, Indiana, Michigan, and Wisconsin. The respondent owns real estate located in Illinois, Indiana, Michigan, New York, and Wisconsin. The respondent owns United States Government Bonds, bonds of United States political subdivisions covering issues of 16 states, and securities issued by railroads, public utilities, and large manufacturing and industrial corporations which operate on a nation-wide basis.

3. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

4. In order to insure to the employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise to effectuate the policies of the Act, all office employees at the respondent's Chicago, Illinois, office, excluding janitors, attorneys, the manager of the real estate department, the inspector of the rent collection department, rent collectors, the chief organizer of the organization department, the personal secretary to the General Secretary, the confidential secretary to the Censor (employed in Milwaukee, Wisconsin), the assistant secretary (administrative) to the General Secretary, the assistant (administrative) to the Treasurer, librarians, and the photostat operator, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, hereinafter called the unit.

5. On and before March 26, 1941, a majority of the employees in the unit designated or selected the Union as their representative for the purposes of collective bargaining with the respondent, and at all times since that date the Union has been the representative for the purposes of collective bargaining of a majority of the employees in the unit [fol. 309] and, by virtue of Section 9 (a) of the Act, has been and is now the exclusive representative of all the employees in the unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

6. On or about March 26, 1941, the Union requested the respondent to bargain collectively in respect to rates of pay, wages, hours of employment, or other conditions of employment with the Union as the exclusive representative of all the employees in the unit. On or about March 26, 1941, and at all times thereafter, the respondent did fail and refuse and continues to fail and refuse to bargain collectively with the Union in that it did fail and refuse and continues to fail and refuse to recognize or negotiate with the Union as the exclusive representative of all of the employees in the unit in respect to rates of pay, wages, hours of employment, or other conditions of employment.

7. By the acts set forth in paragraph 6 hereof, the respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

8. The respondent, by its officers and agents, on or about October 6, 1941, did discharge Anna Owsiak, and has since refused to employ her, for the reason that she joined and assisted the Union and engaged in concerted activities with other employees in the Chicago, Illinois, office of the respondent for the purpose of collective bargaining and other mutual aid and protection.

9. By the acts set forth in paragraph 8 hereof, and each of them, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment and terms and conditions of employment of said Anna Owsiak, and did discourage and is discouraging membership in the Union, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

10. The respondent, from on or about April 1, 1941, and at various times thereafter up to and including the date of the issuance of this Complaint, has warned and discouraged its employees against affiliation with or activities on behalf [fol. 310] of the Union, has interrogated employees concerning their union affiliations, has disparaged and expressed disapproval of the Union, and has offered wage increases to certain employees conditional upon abandoning affiliation with or activities on behalf of the Union.

11. By the acts described above in paragraphs 6, 8, and 10, and by each of the said acts, the respondent did inter-



fere with, restrain, and coerce and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

12. By reason of the acts of the respondent set forth in paragraphs 6, 8, and 10 hereof, the office employees of the Chicago, Illinois, office of the respondent went out on strike on or about October 7, 1941, and the said strike continued until on or about January 27, 1942. The respondent, by its officers and agents, did urge, advise, and warn its striking employees to return to work and give up their concerted activities. The strike was prolonged by the unfair labor practices of the respondent set forth in paragraphs 6, 8, and 10 hereof and set forth hereinafter in paragraph 13.

13. Henry Ziolkowski, an employee who engaged in the strike, as described in paragraph 12 hereof, on or about October 10, 1941, did make application to the respondent for reinstatement. The respondent, by its officers and agents, on or about October 10, 1941, and at all times thereafter, did refuse and fail, and has refused and failed, to reinstate the said Henry Ziolkowski for the reason that he had joined and assisted the Union and had gone out on strike on or about October 7, 1941, and had engaged in other concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection. Said Henry Ziolkowski was also entitled to reinstatement to his former position on October 10, 1941, and at all times thereafter, for the reason that the strike, as set forth in paragraph 12 hereof, was caused by the unfair labor practices committed by the respondent, as set forth in paragraphs 6, 8, and 10 hereof.

[fol. 311] 14. The names of other employees who engaged in the strike, as described in paragraph 12 hereof, are set forth in appendix A which is attached hereto and made a part hereof. On or about January 27, 1942, and at various times thereafter, the employees named in appendix A, and each of them, did make application to the respondent for reinstatement. The respondent, by its officers and agents, on or about January 27, 1942, and at all times thereafter did refuse and fail and has refused and failed to reinstate



the persons named in appendix A, and each of them, for the reasons that they, and each of them, had joined and assisted the Union, or had gone out on strike on or about October 7, 1941, or had refused to give up their affiliation with or support of the Union during the said strike, and had engaged in other concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection. Said employees were also entitled to reinstatement to their former positions on January 27, 1942 and at all times thereafter, for the reason that the strike, as set forth in paragraph 12 hereof, was caused and prolonged by the unfair labor practices committed by the respondent, as set forth in paragraphs 6, 8, 10, and 13 hereof.

15. By the acts set forth in paragraphs 12, 13, and 14 hereof, and each of them, the respondent did discriminate and is discriminating in regard to hire and tenure of employment and terms and conditions of employment of its employees, and did discourage and is discouraging membership in the Union, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

16. By the acts set forth in paragraphs 6, 8, 10, 12, 13, and 14 hereof, and each of them, the respondent did interfere with, restrain, and coerce and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

17. The acts of the respondent set forth in paragraphs 6, 8, 10, 12, 13, and 14 hereof, occurring in connection with [fols. 312-319] the operations of the respondent described in paragraphs 1 and 2 hereof, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

18. The aforesaid acts of the respondent set forth in paragraphs 6, 8, 10, 12, 13, and 14 hereof, and each of them, constitute unfair labor practices within the meaning of Sec-

tion 8 (1), (3) and (5), and Section 2 (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on this 9th day of March 1942, issues its Complaint against Polish National Alliance of the United States of North America, the respondent herein.

Charles A. Graham, Regional Director, Thirteenth Region, National Labor Relations Board.

[fol. 320]

BOARD'S EXHIBIT No. 7

United States of America

Before the National Labor Relations Board

(Caption—Case No. XIII-C-1692)

Answer of Respondent, Polish National Alliance of the United States of North America to the Complaint, as Amended

The Respondent, Polish National Alliance of the United States of North America, answering says:

I. It admits paragraph 1.

2. It denies that it is engaged in the operation of a death, disability and accident insurance business, and the publication of a weekly newspaper and a daily newspaper. It admits that it invests its funds in real estate and a variety of securities. It admits that it is licensed to do its business in various States of the United States, in the District of Columbia, and Manitoba, Canada, but it denies that it writes insurance, collects premiums, and pays out benefits other than as a Fraternal Benefit Society, organized under the Statute of the State of Illinois. It denies that it conducts an "insurance business." It denies that it publishes newspapers other than the weekly official organ of the Society, which is circulated among its members whose subscription thereto is included in their membership fee. It admits that it has cash on deposit and owns certain real estate and mortgages and notes secured by real estate in Illinois and certain other States. It admits that it owns United States Government Bonds, and Bonds of United States political

subdivisions, covering issues in several States, and various securities issued by railroads, public utilities, manufacturing and industrial corporations, operating on a nation-wide basis.

- a) Respondent states that it is a Fraternal Benefit Society organized under the laws of the State of Illinois, and defined as follows:

"Every corporation, society, order, lodge, or voluntary association, without capital stock, formed, [fol. 321], organized or carried on solely for the benefit of its members and their beneficiaries, and not for profit, having a lodge system with ritualistic form of work and a representative form of government and which makes provision for the payment of benefits in accordance with this Article (Article 17, Chapter 73 R.S. of Illinois 1941, Section 894 (282), is hereby declared to be a Fraternal Benefit Society. The word "Society" as used in this Article shall mean all such Fraternal Benefit Societies."

- b) That it complies with the various sections of Article 17 of the said Insurance Code of the State of Illinois and has a lodge system and a representative form of government, and issues benefits in accordance with said Insurance Code and the Constitution and By-Laws of the respondent. That the Constitution and By-Laws of the respondent in force and effect during the period mentioned in the Complaint, as amended, and now in force and effect, are attached hereto, as part of this answer, and by reference specifically made part hereof.

- c) Respondent further states that in order to keep its members fully informed of the respondent's activities and all matters concerning the Alliance which are of interest and of importance, it publishes weekly an official organ known as "The Weekly Zgoda", the subscription to which is included in the membership dues of the members, and said Zgoda is not for sale, either to members or to the Public. That said Zgoda is published for respondent, by the Alliance Printers and Publishers, Inc., a Corporation of the State of Illinois, formed for the purpose of printing and publishing. That the said Alliance Printers and Pub-

lishers, Inc., a Corporation, publishes a certain newspaper known as the "Dziennik Zwiazkowy" which circulates throughout the various States of the Union and which is printed and published by the said Alliance Printers and Publishers, Inc., a Corporation, and not by respondent. Respondent states that the stock of said Alliance Printers and Publishers Inc., [fol. 322] is owned by the Directors of respondent, by virtue of their office as such directors, but that the said Alliance Printers and Publishers Inc., a Corporation, is a separate corporation from respondent, having its internal organization free of control by respondent.

- d) Respondent denies that it is engaged in Interstate Commerce, or any commerce, within the language and meaning of the National Labor Relations Act. It denies that it is engaged in trade, traffic, commerce, transportation or communication among the several States within the meaning of the Act, and alleges that it is a non-profit organization, with the object of carrying out the purposes set forth in the preamble of the Constitution of the Polish National Alliance, attached hereto, and to promote fraternalism among its members, and to provide death, disability, accident and other benefits to its members and their beneficiaries, as authorized by the Convention of the Polish National Alliance, and in accordance with the laws of the State of Illinois pertaining to Fraternal Benefit Societies, and that its activities, set forth in paragraph 2 of the Complaint, as amended, and which are admitted by this answer, are incident to the main purposes of the said Alliance as herein set forth, and as stated in the Constitution and By-Laws, and that such activities are not commerce for profit within the meaning of the National Labor Relations Act, and respondent therefore denies that the National Labor Relations Board has jurisdiction of this respondent and of the subject matter of the Complaint, as amended.

3. It admits paragraph 3.

4. It denies that the employees and the various classes of employees set out in paragraph 4 of the complaint, as amended, constitute an appropriate unit bargaining unit

within the meaning of Section 9 (b) of the Act, and states that in any such unit the persons and classes sought to be excluded by paragraph 4, should be included.

5. It denies that on and before March 26, 1941, the majority of the employees in an appropriate unit, designated [fol. 323] or selected the said Union as their representative for the purpose of collective bargaining, and denies that at all times since that date, said Union has been such representative, and denies that it is now such exclusive representative for the purposes set out in paragraph 5.

6. It admits paragraph 6, but states that it is not engaged in interstate commerce and therefore not subject to the jurisdiction of this Honorable Board or the provisions of the National Labor Relations Act.

7. It denies the allegations of paragraph 7.

8. It denies the allegations of paragraph 8 and states that the said Anna Owsiak was offered re-employment upon the understanding that she would not absent herself as frequently as she had done from her duties as an employee of the respondent, but the said Anna Owsiak refused to accept such re-employment upon such understanding.

9. It denies the allegations in paragraph 9.

10. It denies paragraph 10. If such expressions have been uttered, it was without the knowledge of respondent's officers.

11. It denies the allegations in paragraph 11.

12. It admits that certain employees went on strike on or about the 7th day of October 1941, and that on or about January 27, 1942, an application for reinstatement was made through the said Union. It denies that the strike was prolonged by alleged unfair labor practices of respondent as set forth in the paragraphs mentioned in paragraph 12.

13. It denies that it refused to reinstate the said Henry Ziolkowski for the reasons alleged in paragraph 13, but, on the contrary, states that it offered to re-employ Ziolkowski upon his filing a new application for employment, and denies that said strike was caused by alleged unfair



labor practices of the respondent within the meaning of the Act.

14. It denies that on or about January 27, 1942, and at various times thereafter, the employees named in appendage 8 of the Complaint, as amended, made application to respondent for reinstatement, but admits that an application [fol. 324] was made by the said Union on or about said January 27, 1942, and at a certain other time. It admits that it has not reinstated said persons upon the demand of said Union, but denies that it refuses to reinstate them because of their having gone on strike, or their alleged refusal to give up affiliation with, or support of the Union, or because of their engaging in the activities mentioned.

It states that since said strike there has been a reorganization of the work of the various departments of respondent and elimination of a number of positions and consolidation of others so that there do not now, and did not at the time of the requests for reinstatement, exist sufficient vacancies to accommodate all of the strikers should they apply for reinstatement.

The respondent further states, however, that it is willing to fill such vacancies as shall occur by such of the strikers as shall apply for reinstatement, who possess the necessary qualifications and as such vacancies occur respondent offers to notify the strikers of their existence. This offer is made without prejudice and is not a waiver of the matters of defense set up herein or any of them. Respondent further states that it has not filled any of the vacancies caused by the strikers leaving work and such vacancies that have been filled since the strike were those created by the departure of existing personnel and were not places formerly occupied by the strikers.

It denies that said employees were entitled to reinstatement to their former positions on January 27, 1942, and at all times thereafter because of the alleged unfair practices charged against respondent.

Respondent further states that the said employees are not entitled to reinstatement, among other things because of the unlawful violence committed during said strike, and which was the subject matter of a certain proceeding in the Superior Court of Cook County, Case No. 41S-17531, in which a full hearing was had as to charges of violence made by plaintiff, Alliance Printers and Publishers, Inc., a cor-



poration, against said Union and its members, and much evidence offered on behalf of said plaintiff and Union before John J. Kelly, Master in Chancery of the Superior [fol. 325] Court of Cook County, and after full hearing and argument of counsel, the said Master in Chancery has prepared a Report, finding the allegations of the Complaint, as amended, as to violence sustained, and recommending the issuance of an injunction as prayed in the Complaint; as amended; a copy of the recommendation of said Master is attached hereto as Exhibit "B" and made part hereof.

15. Respondent denies the allegations of Paragraph 15.

16. Respondent denies the allegations of Paragraph 16.

17. Respondent denies the allegations of Paragraph 17.

18. Respondent denies the allegations of Paragraph 18.

Wherefore respondent requests that the Complaint, as amended, be dismissed.

Polish National Alliance of the United States of North America, 1520 West Division, Street, Chicago, Ill., By Charles Rozmarek, President. (Seal.) Attest: A. S. Szezczerbowski, General Secretary.

Casimir E. Midowicz and Ewart Harris—Attorneys. R. 1717—139 N. Clark St., Chicago, Ill.

STATE OF ILLINOIS,  
County of Cook, ss:

Charles Rozmarek, being duly sworn, on oath states that he is President of the Polish National Alliance of the United States of North America, respondent herein, on whose behalf he has subscribed the foregoing answer, being duly authorized so to do as such President, that he has read [fol. 326] the answer so subscribed by him on behalf of respondent and that said answer is true.

Charles Rozmarek.

Subscribed and sworn to before me, this 20th day of March, 1942, by the said Charles Rozmarek.

A. E. Paluszewski, Notary Public. (Seal.)

My commission expires: January 14th, 1943.

## EXHIBIT "A" TO ANSWER

Constitution and By-Laws of The Polish National Alliance  
of the United States of North America

*As revised and amended at the regular meeting of the Convention held Sept. 10 to 16, 1939, at Detroit, Mich.*

## Preamble

When the Polish Nation, notwithstanding heroic sacrifices and sanguinary struggles, lost its independence, and by decree of Providence became doomed to triple bondage and was divested of its rights to life and development by force of the invaders, that portion thereof, most severely wronged, voluntarily preferring exile to cruel bondage in the Motherland, sought refuge under the guidance of Kasciuszko and Pulaski, in the free land of Washington, and settling here, found Hospitality and Equal Rights.

These valiant pilgrims, ever mindful of their duties to their newly adopted country and their own nation, founded the Polish National Alliance of the United States of North America for the purpose of forming a more perfect union of the Polish people in this country; insuring to them a proper moral, intellectual, economic and social development; preserving the mother tongue as well as the national culture and customs; and promoting more effectually all movements tending to secure, by all legitimate means, the restoration and preservation of the independence of the Polish territories in Europe.

[fol. 327] Today, therefore, desiring to strengthen the ground work of the Alliance, we, the members and Dele-

(page 4)

gates of the XXVIIIth Convention, assembled in Detroit, Michigan, on the 16th day of September, A. D. 1939, as faithful guardians of the ideals, which these founders bequeathed to us as a sacred heritage, supported by our fifty-nine years' experience, do hereby ratify and declare these Fundamental Laws as the supreme law, binding equally all the members associated in the Polish National Alliance.

## Article I

### The Society

**SECTION 1.—Definition of Words as Used in this Constitution and By-Laws.**—The word "Convention" shall mean the Supreme legislative and governing body. The words "Supervisory Council" shall mean the judicial, appellate and supervising body. The words "Board of Directors" shall mean the executive and managing body. The words "District," "Council," "Lodge," or "Juvenile Circle" shall mean a subordinate body organized as provided under these By-Laws. The word "District" shall refer to a body composed of Councils. The word "Council" shall refer to a body composed of "Lodges." The word "Lodge" shall refer to a body of men, women, or men and women. The words "Juvenile Circle" shall refer to a body of juniors. The masculine gender includes the feminine; the singular includes the plural and the plural includes the singular.

**SECTION 2.—Name.**—The name of this Society shall be Polish National Alliance of the United States of North America, hereinafter referred to as "Alliance".

**SECTION 3.—Location.**—The principal office shall be located in the City of Chicago, County of Cook, State of Illinois.

**SECTION 4.—Nature.**—The Alliance is a fraternal benefit society, incorporated under the laws of the State of Illinois.

**SECTION 5.—Object.**—The object of the Alliance shall be:

[fol. 328]

(page 5)

- (a) To carry out the purposes set forth in the Preamble hereof;
- (b) To promote fraternalism among its members; and
- (c) To provide death, disability, accident and other benefits to its members and their beneficiaries, as authorized by the Convention in accordance with the laws of the State of Illinois, pertaining to fraternal benefit societies.

**SECTION 6.—Territory.**—The territory of the Alliance shall embrace the United States of America and such other

territories in which the Alliance shall be authorized to do business.

## Article II

### Membership

**SECTION 7.—Qualifications.**—Members of the Alliance may be persons between sixteen (16) and sixty (60) years of age, at nearest birthday, of good moral character, physical and mentally sound, who by birth, descent or consanguinity are of Polish, Lithuanian, Ruthenian or Slovak nationality and their husbands and wives of white race regardless of nationality, and who shall be admitted to membership in the manner provided in these By-Laws.

**SECTION 8.—Juveniles.**—The Board of Directors shall provide for benefits on the lives of children, less than sixteen (16) years of age at nearest birthday, as authorized by the laws of the State of Illinois and these By-Laws. Such children shall have no voice in the management of the Alliance.

**SECTION 9.—Classes of Members.**—The adult members shall be divided into two classes: "Beneficial" and "Social" members, provided, that after the adoption of these By-Laws, no social members shall be admitted into the Alliance.

**SECTION 10.—Beneficial Members.—Rights.—Contract.**—

(Page 6)

Each beneficial member shall be entitled to all the rights [fol. 329] and privileges of the Alliance, except as provided in Section 16, and upon his death, while in good standing, the beneficiary or beneficiaries, named in his benefit certificate, shall be entitled to the rights evidenced by the application for membership, the medical examination, (or declaration of insurability if used in lieu of medical examination) the benefit certificate and riders or indorsements, the By-Laws of the Alliance in force at the time of the member's death, and the Articles of Incorporation, all of which, taken together, constitute the contract between the member and the Alliance. Any changes, additions or amendments to said Articles of Incorporation or these By-Laws, duly made or enacted by the Convention, after the issuance of a benefit certificate, shall bind the

member and his beneficiaries in all respects as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership.

**SECTION II.—*Social Members.***—Each social member shall be entitled to the password and to all fraternal privileges of the Alliance, but shall not be entitled to participate in the death benefit fund of the Alliance, and shall not be eligible to any office in a lodge, or as delegate to the Electoral and Council Assemblies, or as representative to the Convention, nor shall he vote in the selection of any such delegate or representative, or upon any matter affecting the rights of beneficial members of his lodge.

**SECTION 12.—*Applications for Membership.—Election by Lodge.***—Applications for membership must be made to a lodge on forms prescribed by the Board of Directors, and the applicant must be recommended by a beneficial member in good standing. A majority vote of the members present shall be necessary for election of an applicant. Every applicant so elected to membership must be inducted in accordance with the ritual of the Alliance.

(Page 7)

**SECTION 13.—*Reconsideration of Unfavorable Vote.***—The reconsideration of a vote by which an applicant has been rejected, can be had at the same meeting at which the vote was taken, or at the next regular meeting, if two-thirds ( $\frac{2}{3}$ ) of the members present vote in favor of such reconsideration.

[fol. 330] **SECTION 14.—*Rescission of Election.—Refusal to Issue Certificate.***—At any time before the issuance of a certificate by the General Secretary, the lodge may, by majority vote of the members present, rescind its election of the applicant and give notice thereof to the General Secretary. In such event, the General Secretary shall not issue any certificate. The General Secretary may also upon approval of the Board of Directors refuse to issue a certificate to any applicant, whenever in his judgment same should not be done, and he may also recall any certificate at any time before its delivery to the applicant, in which event such certificate shall be void.

**SECTION 15.—*Dues.***—In addition to the rates and per capita tax, required under his benefit certificate, each bene-



ficial member shall pay, to the financial secretary of his lodge, such dues as the lodge may fix in its by-laws, provided, that each social member, in addition to such dues, shall pay monthly to the General Fund of the Alliance, such per capita tax as may from time to time be fixed by the Convention.

**SECTION 16.—*Good Standing.***—A member shall be in good standing, when he has paid all rates, special assessments, per capita tax, lodge dues and fines levied against him, and has complied in every particular with the By-Laws of the Alliance, provided, that a member holding only a Paid-Up certificate or a certificate of Extended Term Insurance shall have the right to continue his membership in the lodge by payment of regular monthly lodge dues and the fixed per capita tax to the General Fund of the Alliance, and otherwise complying with the By-Laws of the Alliance.

(Page 8)

**SECTION 17.—*Per Capita Tax.***—The per capita tax due from beneficial members of the Alliance shall be included in and shall constitute a part of the monthly rates pertaining to their respective certificates, and shall be payable to the Alliance accordingly.

[fol. 331]

### Article III

#### Beneficial Certificates

**SECTION 18.—*Forms and Rates.***—The Alliance may issue benefit certificates upon such forms and plans, which shall provide for such benefits and privileges, with such premium rates, and on such mortality basis and interest assumption, all as may from time to time be prescribed by the Board of Directors, and permitted by the laws of the State of Illinois or the laws of other States in which the Alliance is authorized to do business. The rates for all plans adopted shall be published in the official Rate Manual.

**SECTION 19.—*Payment of Rates.***—Each beneficial member shall pay monthly all lodge dues, the rates specified in his certificate and riders, and special assessments that may be levied pursuant to these By-Laws. Such payments may be made in advance or on a quarterly, semi-annual or annual basis, if so provided in the certificate. All monthly pay-



ments shall be due and payable on the first day of each calendar month, (or if payable quarterly, semi-annually or annually, on the first day of such period) and the remainder of the calendar month, shall constitute a period of grace, during which such payment may be made.

**SECTION 20.—*Payment to Unauthorized Person.***—Except as otherwise provided in these By-Laws, all dues, per capita tax, assessments or rates shall be paid by each member, to the financial secretary of his lodge, or to a person expressly authorized by the executive board of the lodge to receive such payments. If payment is made to any unauthorized person, such person, whether an officer or member of a lodge or of the Alliance, shall be deemed to be the agent of the

(Page 9)

member, and such payment shall not be deemed payment to the Alliance, unless and until actually received by the Treasurer of the Alliance.

**SECTION 21.—*Juvenile Certificates.***—Upon the application of any adult person qualified for membership in the Alliance, a benefit certificate may be issued upon the life of any child of such person, or upon the life of any child, who [fol. 332] is dependent upon such person for support, in which certificate such person shall be the beneficiary, provided, however, that if the original beneficiary dies, the juvenile certificate may be transferred to any other qualified person, who shall obligate himself for the child's support, and continue to pay the rates required on such certificate.

**SECTION 22.—*When Juvenile Member Admitted to Adult Membership.***—Any juvenile member, upon attaining age sixteen (16), shall be at such date, automatically, admitted to a lodge as an adult member of the Alliance, without further initiation or application, and shall be entitled to exercise the full privileges of an adult member from that time, provided, however, that the cash value of any juvenile certificate at such date, may not be withdrawn or, (except as to the automatic provision in the certificate), applied under the non-forfeiture provisions of the certificate by the act of such juvenile member, prior to his attaining the age of majority, without the written consent of the person, who was the owner of said certificate prior to the juvenile member attaining the age of sixteen (16).

**SECTION 23.—*Special Assessments.***—The Board of Directors shall have power, should any emergency or contingency arise, or the funds or reserves of the Alliance become impaired, to levy special assessments on each beneficial member in such amounts as it may determine to be necessary. In such case notice shall be given by the General Secretary to the respective lodge financial secretaries of the amount of any special assessments to be paid by each member, and each

(Page 10).

lodge financial secretary shall, thereupon, notify each member of the amount due from him, and each such member shall, within the time specified, pay such assessment to the financial secretary. If any such assessment be not paid, within the time specified, it shall be charged against the certificate of the member, bearing interest at the rate of not less than four (4) per cent, compounded annually, from the time of notice of such assessment.

**SECTION 24.—*Increase or Decrease of Benefits.***—Any beneficial member, who has not attained his sixtieth (60) [fol. 333] birthday may, at any time, receive another certificate for an additional amount, upon application therefor, on the blank prescribed, and furnishing evidence of insurability, satisfactory to the Medical Director. Any beneficial member may surrender his certificate for one of a lessor amount, at any time, in accordance with rules prescribed therefor.

**SECTION 25.—*Valuation.***—The full required legal reserve on all certificates outstanding shall be maintained at all times, and it shall be the duty of the Board of Directors to cause an annual valuation to be made of all certificates in force on December 31st of each year, such valuation to be made by competent actuaries and in conformity with the requirements of the several States in which the Alliance is licensed to do business.

**SECTION 26.—*Participants in Surplus.***—Whenever, in the judgment of the Board of Directors, it shall become advisable to apportion any surplus in the benefit fund, such apportionment shall be made on the basis of each member's contribution to such surplus, after the reserves and other liabilities are determined and contingent reserves are set aside.

**SECTION 27.—*Classification of Risks.***—It shall be the duty of the Medical Director and the Actuary, from time to time, to make an investigation regarding various occupations and

(Page 11)

the death and disability rates connected therewith, and report their findings to the Board of Directors, whose duty it shall be to act upon such findings, and its action shall be final and binding upon all members of the Alliance admitted thereafter, and their beneficiaries, as though such occupations were enumerated in these By-Laws, as hazardous or prohibited.

**SECTION 28.—*Waiver of By-Laws.***—No officer, employee or agent of the Alliance nor any lodge or officer or member thereof, shall have the right, power or authority to waive any provisions of the By-Laws of the Alliance, which relate to the contract between the member and the Alliance. Neither shall any knowledge or information obtained by, nor notice to any lodge or officer or member thereof, affecting any rights of the Alliance under the contract, be held [fol. 334] or construed to be the knowledge of, or notice to the Alliance or the officers thereof, until after such information or notice has been presented in writing to the General Secretary.

**SECTION 29.—*Illinois Laws Control Certificates.***—All benefit certificates and riders issued by the Alliance shall be executed on behalf of the Alliance at its home office in Chicago, Illinois, and shall be construed and interpreted according to the laws of the State of Illinois.

(Page 14)

## Article V

### Beneficiaries.—Payment of Benefits

**SECTION 35.—*Who May be a Beneficiary.***—Any beneficial member may, in his application, direct any benefit to be paid to his estate or to any person or entity, as may be permitted by the laws of the State of Illinois, provided, that a member may designate a trustee for the benefit of any beneficiary, within the foregoing provisions, and the receipt of such trustee shall be final and binding upon such beneficiary. A member may also appoint principal and contingent benefi-

ciaries according to conditions which the Board of Directors may prescribe, provided, however, that if the laws of any State in which the Alliance is authorized to do business, do not permit the payment of benefits in accordance with the foregoing provisions, the benefits shall be paid as the laws of such State provide.

No beneficiary shall have or obtain any vested interest in the proceeds of any certificate until such certificate has become due and payable in conformity with the provisions of the insurance contract.

- (a) In the event of the death of any beneficiary named in the certificate before the death of the member, if no other designation was made, as provided in these By-Laws, that part of the benefit made payable to the deceased beneficiary or beneficiaries, shall be paid to surviving beneficiary or beneficiaries, share and share alike, unless otherwise provided in the certificate.

[fol. 335]

(page 15)

- (b) If the designated beneficiary shall be disqualified under the law, the benefit shall be paid in accordance with the provisions of sub-section (c) hereof, provided, that where two or more beneficiaries are named, one or more of whom are disqualified and the remainder qualified, the benefits in all cases shall be paid to the surviving qualified beneficiary or beneficiaries, share and share alike unless otherwise provided in the certificate.
- (c) In the event of the death of all beneficiaries named in the certificate before the death of the member, if no other designation has been made, the benefit shall be paid in the following order: wife or husband, (excluding common law wife or husband), children, including adopted children, dependent or dependents, parents, adopting parents, sisters and brothers, grandparents, grandchildren, provided, that when there are two or more relatives of the same same degree of kinship, the benefit shall be paid them share and share alike. If there be no

relatives as above enumerated, the benefit shall be paid to the member's estate.

**SECTION 39.—Funeral Benefits.**—If, on the death of a member, no provision is made by the beneficiary or family of the deceased for payment of the funeral expenses, the Board of Directors may authorize the payment of such funeral expenses as may reasonably appear to it to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by burial of the member, provided, the funeral benefits shall not exceed the sum of Two Hundred Dollars (\$200.00) and shall be deducted from the proceeds of the certificate, and the remaining sum shall be the amount to which the beneficiary shall be entitled.

(page 17)

**SECTION 41.—Board of Directors to Determine Liability.**—The Board of Directors shall have exclusive authority, within the Alliance, to determine the liability of the Alliance for benefits, and it is hereby given full power and authority to settle, by compromise or otherwise, any death, accident or disability claim, when in its judgment the best interest of the Alliance require it.

(page 19)

## Article VI

### Funds of the Alliance and Investments

**SECTION 47.**—The Alliance shall maintain a Mortuary fund, a School fund and a General fund, provided, however, that for accounting purposes any of said funds may be subdivided and subordinate funds maintained for specific

(page 20)

purposes in these By-Laws set forth, and provided further, that assets of said funds need not be separately invested or deposited, but each fund shall be deemed to have its proper proportionate share in the assets of the Alliance.



**SECTION 48.—*Apportionment of Rates.***—The rates paid on adult and juvenile certificates shall be apportioned to each fund by the Board of Directors, monthly, as follows:

- (1) To the Mortuary fund such part of the first year's contribution as shall be required for the first year's mortality and reserves, and from the subsequent years, such parts as shall be necessary to maintain the reserves on the basis of the mortality tables and interest assumptions employed in the calculation of rates, and such contingent reserves, and surplus funds, as the Board of Directors shall direct.
- (2) To the School fund three (3) cents for each adult member.
- (3) To the General fund the balance of the contributions.

**SECTION 49.—*Mortuary Fund.***—The Mortuary fund shall consist of such parts of the monthly rates as provided in Section 48, and the earnings thereof, and shall be used only to pay the benefits promised in the benefit certificates and riders, all accrued claims and other obligations thereunder, [fol. 337] and all expenses incident to the acquisition, maintenance, preservation or sale of assets of this fund, and any surplus therein may be refunded or disbursed, as provided in Section 26. The accounting between adult members and juveniles shall be in conformity with requirements of States in which the Alliance is authorized to do business.

**SECTION 50.—*School Fund.***—The School fund shall consist of three (3) cents from the monthly rate paid by each

(page 21)

beneficial member and three (3) cents from the monthly per capita tax paid by each social member of the Alliance. This fund shall be used for the maintenance and support of the Alliance School.

**SECTION 51.—*General Fund.***—The General fund shall consist of all the income of the Alliance and all accretions thereto, not specifically apportioned to the Mortuary fund or to the School fund. To the General fund shall be charged all expenses of the Alliance of whatever nature, other than expenses incident to the acquisition, maintenance, preservation or sale of assets of the Mortuary fund.



**SECTION 52.—*Investment of Funds.***—Funds of the Alliance shall be invested only in securities authorized by the laws of the State of Illinois, and shall be made by a Committee of five (5), consisting of the President, as chairman, the General Secretary, the Treasurer and two (2) members of the Board of Directors. Each investment shall be approved by at least a majority of the Committee.

**SECTION 53.—*Legality.—Restrictions.***—No investment shall be made in any security whatsoever, until the legality of such investment shall have been approved by the General Counsel, and no loan or investment shall be approved, in which any officer, director, or member of the Investing Committee of the Alliance has an interest.

## ARTICLE VII

### THE CONVENTION

**SECTION 54.—*Composition.***—The Convention is the supreme legislative and governing body and shall be composed of the Censor and of representatives chosen in accordance [fol 338] with Article VIII of these By-Laws; provided, however, that the Vice-Censor, the members of the Board of Directors, the General Counsel, the Medical Director, the Comptroller, the Chief Editor and the Manager of Publications shall be entitled to a seat and voice in the Convention, but shall not be entitled to vote.

(page 22)

**SECTION 55.—*Representatives.***—Each Council shall be entitled to one representative for every four hundred (400) members, or a major fraction of that number, in good standing, as established by the records of the General Secretary for the month of May, preceding the regular Convention, excluding members holding only Paid-Up certificates or certificates of Extended Insurance, unless payments are made by them as provided in Section 16. If a Council on such date shall have less than two hundred one (201) members in good standing, it shall be joined, for purposes of representation in the Convention, to the nearest Council, as determined and ordered by the Board of Directors.

**SECTION 56.—*Qualifications of Representatives.***—A representative to the Convention shall be a beneficial member

of the Alliance in good standing, who is a citizen of the United States, and who shall have been active as delegate to the Council, uninterruptedly, for the last two (2) years before a regular Convention, and who is not an officer, delegate, representative, agent or employee of any other fraternal benefit society, association or corporation, doing a life insurance business. No officer, excepting District Commissioners, and no employee of the Alliance shall be a representative to the Convention. Each representative elected as provided in these By-Laws shall hold his office for the full term between regular Conventions.

**SECTION 57.—*Mileage and Per Diem.***—Representatives to the Convention shall be paid Eight (\$8.00) Dollars per day for the time in actual attendance at the Convention and the time spent in travel, and five (5) cents per mile each way of travel to and from the place of the Convention. The officers named in Section 54 and employees of the Alliance shall receive the cost of travel and Eight (\$8.00) Dollars per [fol. 339] day for traveling expenses, with the exception of the Censor, who, besides the cost of travel, shall receive Ten (\$10.00) Dollars per day for traveling expenses. Such payments shall be made as the Convention may determine.

(page 23)

No member of the Convention shall be excused from attendance at any session, except by permission of the Chairman or by a majority vote of the Convention.

**SECTION 58.—*Regular Convention.***—Regular meetings of the Convention shall be held every four (4) years, in the second half of the month of September, at such place as the Convention by a majority vote may designate.

**SECTION 59.—*Special Convention.***—Special meetings of the Convention may be called by the Censor, when, in his opinion, a grave and urgent necessity requires such action, and must be called by the Censor, whenever two-thirds ( $\frac{2}{3}$ ) of the lodges or a majority of the Councils of the Alliance shall present to him a written request for such Special Convention. Each Special Convention shall consist of all members of the preceding regular Convention, and such as shall be elected by the Councils to fill vacancies caused by any reason.

. . . . .

(page 27)

**SECTION 69.—Powers of the Convention.**—The Convention shall be the sole judge of the election, qualifications and constituency of its own members, and in addition to other powers herein specified shall have power to:

- (a) Make laws, rules and regulations for the government of the Alliance, which shall not be in conflict with the Articles of Incorporation of the Alliance, or the laws of the State of Illinois;
- (b) Possess jurisdiction over all districts, councils, lodges, juvenile circles and all other subordinate bodies, provided in these By-Laws;
- (c) Elect, and fix the compensation for, officers provided by these By-Laws;

[fol. 340]

(page 28)

- (d) Approve a budget for the disbursements of the Alliance, including salaries of officers and donations for benevolent purposes;
- (e) Redress grievances and prefer and determine charges against any member, representative, officer, director or commissioner;
- (f) Establish and change, without amending these By-Laws, the number and territory of commissioners' districts and directors' circuits;
- (g) Determine the admission of any Polish organization to the Alliance as a lodge, or through reinsurance or amalgamation upon such terms as may be approved by the Board of Directors, the Supervisory Council and the Department of Insurance of the State of Illinois;
- (h) Elect non-voting honorary members of the Alliance;
- (i) Amend, enact or repeal these By-Laws or the Articles of Incorporation of the Alliance in the manner provided in these By-Laws;
- (j) Do and perform any and all other acts and things by it deemed necessary or expedient for the welfare

and perpetuity of the Alliance, and to carry out its purposes and objects.

SECTION 70.—*Restrictions*.—The Convention shall not:

- (a) Adopt any law which would deprive the members of the Alliance of the right to representative government, as the same is defined by the laws of the State of Illinois;
- (b) Adopt any rule, resolution or regulation in contravention or inconsistent with these By-Laws;

(page 29)

- (c) Abridge or limit religious freedom or political convictions of the members of the Alliance.

[fol. 341]

## ARTICLE VIII

### ELECTION OF REPRESENTATIVES TO THE CONVENTION

SECTION 71.—*Electoral Assembly*.—Candidates for representatives to the Convention and for a man and woman District Commissioner, shall be nominated at the Electoral Assembly of each Council which shall be composed of delegates elected by lodges, belonging to each Council, in proportion of one (1) delegate for each twenty-five (25) members in good standing and a major portion of that number, according to the records of the General Secretary of the Alliance for the month of May in the Convention year, provided, that each lodge shall be entitled to at least one (1) delegate.

SECTION 74.—*Election of Delegates*.—Each lodge shall hold its election of delegates within thirty (30) days from the date of publication of the rules of election, at its regular

(page 30)

meeting place, provided that only beneficial members in good standing shall vote for delegates to the Electoral Assembly. Each lodge shall make final disposition of all contests in connection with the election of its delegates and report, forthwith, the result of the election, in writing, signed by the proper officers of the lodge, to the president of the Council to which the lodge belongs.

**SECTION 75.—Time, Place and Officers of Electoral Assembly.**—Each Council shall fix a day and place, not earlier than ninety (90) days, not later than sixty (60) days, before each regular Convention, for the purpose of nominating candidates for representatives to the Convention and nominating candidates for a man and woman District Commissioner. Notice of the time and place of the meeting of the Electoral Assembly shall be sent by the secretary of the Council to each lodge within the Council, not less than ten (10) days prior to said meeting. The officers of the Electoral Assembly shall be officers of the Council, who shall not be entitled to vote unless they are delegates to the Electoral Assembly.

[fol. 342] **SECTION 77.—Nominations for Representatives and Commissioners.**—Each lodge shall, upon roll call in numerical order, nominate, orally, one (1) or more candidates for representatives of the Council to the Convention, as provided in Section 55, and candidates for nominees of the Council for a man and a woman Commissioner of the District, in which the Council is located, provided that

(page 31)

persons who are candidates for man and woman Commissioner of the District, shall possess the qualifications prescribed in Section 92, and shall be residents of the District.

**SECTION 78.—Primary Election.**—Upon completion of the nominations and placing of all the names of the nominees on the primary ballot, in the order in which they were nominated, a primary election shall be held for the nomination of candidates for representatives and for a man and a woman District Commissioner. Each delegate shall be entitled to cast as many votes as there are offices to be filled, but shall not cast more than one (1) vote for each candidate. The secretary shall call the names of delegates by turn and the chairman of the judges of election shall deliver to each delegate a ballot upon which, before delivery, he shall impress the official seal of the Council. Each delegate after marking his ballot shall place it in the ballot box, which shall be in the custody of the judges of election, inspected and sealed by the chairman of the judges before voting.



**SECTION 79.—Counting of Ballots.—Final Voting for Nominees for Man and Woman District Commissioner.**—The counting of ballots shall be held in the place of meeting, immediately upon completion of the voting, in the presence of all the judges, who shall enter the votes on official tally sheets and the result shall be announced by the chairman of the judges of election immediately upon completion of the counting and shall be certified by all the judges of election. The final balloting on the nominees for a man and a woman District Commissioner shall thereupon be held by the Electoral Assembly and each candidate receiving a majority vote shall be certified to the [fol. 343] Convention Nominating Committee, as provided in Section 86.

(Page 32)

**SECTION 81.—Election.**—Candidates for representatives receiving the highest number of votes in the primary ballot, not exceeding twice the number of offices to be filled, shall be placed on the final ballot in the order of votes received by each, and those who receive the highest number of votes in the final balloting in the lodges, not exceeding the number of offices to be filled, shall be declared elected. Each Council shall appoint a day, not earlier than seventy-five (75) days before the Convention, on which all lodges belonging to it shall vote in their meeting places or in such places as they may select.

**SECTION 82.—Secret Ballot.—Tie Vote.—Aid in Voting.**—Both the primary and final voting shall be by secret written ballot. In the event of a tie at the primary or final election another ballot as to those affected by the tie vote, shall be taken and the one, who receives a majority on that or a subsequent ballot, shall be declared elected. Any person entitled to vote in the primary or in the final election may request the aid of two (2) judges of election in marking of his ballot, but he shall not be aided by anyone else.

(page 33)

**SECTION 84.—Voting.**—Every beneficial member in good standing of a lodge shall be entitled to vote for as many



candidates as there are offices to be filled, but shall not cast more than one (1) vote for each candidate. Upon checking off the name of the member on the list of the financial secretary of the lodge, a judge of election shall hand to the member a ballot on which before delivery, he shall impress the official seal of the lodge. After marking of the ballot each member shall place the same in the ballot box in the custody of the judges of election. Each lodge shall furnish such ballot box and deliver it to the judges of election on the day of voting. The president of the lodge [fol. 344] shall close and seal the ballot box in the presence of, and after its inspection by, the judges of election before proceeding to vote.

**SECTION 85.—Counting of Ballots in Lodges.—Result of Voting.**—Immediately upon completion of the voting the judges of election in each lodge shall count the ballots, enter them on the official tally sheets and make known the result of the voting by posting it in a conspicuous place where the voting was held. The result shall be certified and signed by all the judges of election in three copies,

(page 34)

one of which shall be delivered to the council, another to the lodge, and the third, together with the ballots and tally sheets, shall be sent in a sealed envelope, not later than the following day after the voting, to the chairman of the Committee of Judges of the Electoral Assembly, as provided in Section 76. The Committee of Judges shall sum up and tabulate all the results of voting in the lodges and shall make a report thereon, signed by all the judges, at the next meeting of the council. The ballots and official tally sheets shall be sealed by the chairman of the Committee of Judges and shall remain in his custody until the adjournment of the Convention.

**SECTION 86.—Credentials.**—Each council shall meet, not later than eight (8) days after the election, at a time and place previously announced, for the purpose of accepting the report of the Committee of Judges, and announcing and confirming the result of the election. The executive board of the council shall issue credentials to the representatives duly elected, and a nominating certificate to each of the candidates for man and woman Commissioner of

the District, within ten (10) days following the confirmation of the election, signed by at least a majority of its members, and shall forward duplicate copies thereof to the General Secretary of the Alliance, who shall transmit the copies of credentials to the Credential Committee of the Convention, and copies of the nominating certificates for man and woman District Commissioner to the Nominating Committee of the Convention.

[fol. 345]

(page 35)

**SECTION 88.—Contests in Elections.**—In the event of a protest or contest of the announced result of election, at the meeting of the council, as provided in Section 86, the protesting candidate must, within thirty (30) minutes, file a written complaint with the presiding officer of the council, in which he shall distinctly state:

- (a) Where and how he has been wronged and in what does he perceive the wrong to be;
- (b) Who had wronged him and in what manner;
- (c) What was the result of the wrong;
- (d) Name, surname, number of the lodge and the address of the contestant.

**SECTION 89.—Contest Commission.**—A protest or contest filed, as provided in the preceding Section, shall be reviewed by a Contest Commission, which shall consist of five (5) delegates, who are not candidates for a representative or a Commissioner, two (2) of whom shall be appointed by one side, two (2) by the other and these four (4) shall appoint a fifth. In case of failure of the four to agree upon a fifth member, promptly, the presiding officer of the council shall appoint the fifth member of the Commission. A majority of the Commission constitute a

(page 36)

quorum authorized to review the contest. It shall be the duty of the Contest Commission to examine the whole question of the contest accurately, recount the questioned ballots of a lodge or lodges, hear evidence pertaining to the

contest, render a written decision within ten (10) days from its selection and submit the same to the council for confirmation at a regular or special meeting called for that purpose. Such decision, confirmed by the council, is final. If the executive board of the council shall fail to conform with the decision of the Commission, confirmed by the council, in matters reviewed by it, then in such an event the Commission shall have the right to certify and sign the credentials and nominating certificates. The commission shall send a detailed report in writing to the Convention Committee on Credentials.

[fol. 346]

## Article IX

### Officers of the Alliance

**SECTION 90.—*Elective Officers.***—The elective officers shall be a Censor, Vice-Censor, a man Commissioner and a woman Commissioner elected from each District, President, Vice-President, woman Vice-President, General Secretary, Treasurer, four (4) men Directors and three (3) women Directors for Circuit A, and a man or woman Director for each Circuit designated B, C, and D.

**SECTION 91.—*Appointive Officers.***—The appointive officers of the Alliance shall be a General Counsel, a Comptroller, a Chief Editor, and a Manager of the Alliance Publications all of whom, at the time of their appointment, shall be beneficial members of the Alliance in good standing.

**SECTION 92.—*Qualifications.***—No person shall be elected to any office of the Alliance, unless he shall be a citizen of the United States, and a beneficial member of the Alliance, in good standing, for at least five (5) years, uninterruptedly, at the time of his election. An officer of the Alliance, who shall be or become engaged elsewhere, in any

(page 37)

capacity, in the business of life insurance, or who shall be or become an official of another fraternal benefit society, shall thereby forfeit his right to office, and his office shall immediately become vacant. Appointive officers and employees in the offices of the Alliance, who desire to be candidates for any elective office, must resign from their positions, six (6) months before filing their petitions.

**SECTION 93.—Nominations for Elective Officers.**—Nominations for all elective officers of the Alliance, with the exception of men and women District Commissioners, shall be made by petition, in form prescribed by the Board of Directors, signed by at least fifty (50) beneficial members of the Alliance, in good standing, and filed with the General Secretary not later than sixty (60) days before the Convention. The General Secretary shall acknowledge the receipt of such petition from each such nominee and shall publish the names of all nominees in the official paper [Vol. 347] of the Alliance, not later than thirty (30) days before the Convention, and deliver all nominating petitions to the Nominating Committee of the Convention. This Committee shall examine each petition, and if it is found to be in proper form, shall report the name of the candidate to the Convention to be placed in nomination.

**SECTION 94.—Nomination and Election of District Commissioners.**—Nominations for men and women District Commissioners shall be made as provided in Section 77 and 79. The representatives to the Convention from each District shall, at a time fixed by the Convention Committee on Rules, meet in a separate caucus and select, by ballot, a candidate for a man Commissioner and a candidate for woman Commissioner from the nominees of Councils, within each District, for these offices. Each caucus shall report to the Convention the names of the candidates receiving a majority vote, who shall be declared elected without ballot.

**SECTION 95.—Voting and Rules of Election.**—All voting shall be by secret written ballot, and according to rules of

(page 38)

elections prescribed by the Committee on Rules and approved by the Convention.

**SECTION 96.—Election and Installation.**—The officers named in Section 90 shall be elected at each regular Convention and shall be deemed qualified, when installed by the Chairman of the Convention, in accordance with the ceremony prescribed in the ritual. In the intervals between Conventions, the installation shall be made by the Censor or a person designated by him, provided, that qualifications for office shall not be complete on the part of officers re-

quired to give bond; until their bonds shall have been approved and accepted within the time prescribed.

**SECTION 97.—Term of Office.—Report.—Presence at the Convention.**—All of the elective officers of the Alliance shall be elected for the next ensuing quadrennial term, commencing on the date designated by the Convention, and shall serve until their successors are duly elected and qualified. The appointive officers of the Alliance shall [fol. 348] serve for such time as the appointing authority may determine. All officers shall make a written report of their official activities to the Convention. Members of the Board of Directors, and appointive officers as provided in Section 91, shall be present at the sessions of the Convention and give all information respecting their office as the Convention may request.

**SECTION 98.—Compensation.**—Each elective and appointive officer shall receive such compensation as each regular Convention may determine. Such compensation shall not be diminished or increased during his term of office.

**SECTION 99.—Vacancies.**—Vacancies caused by any reason in the elective offices of the Alliance shall be filled by the Supervisory Council as provided in Section 108-(6), excepting vacancies in the offices of men District Commissioners which shall be filled as provided in Section 106. Vacancies in the offices of women District Commissioners

(page 39)

shall be filled in the same manner as those of men District Commissioners.

## Article X.

### The Supervisory Council

**SECTION 102.—Composition.**—The Supervisory Council shall be the judicial, appellate and supervisory body of the Alliance and shall be composed of the Censor, Vice-Censor and a man Commissioner elected from each District.

**SECTION 103.—Meetings and Quorum.**—The meetings of the Supervisory Council shall be called by the Censor as often as may appear to him to be necessary. Upon the written demand of a majority of the Commissioners, the Censor shall call a meeting, upon ten (10) days written



notice of the time and place of said meeting sent to each member of the Supervisory Council. A majority of all members of the Council shall constitute a quorum for the transaction of business at any meeting.

SECTION 104.—*Vote by Correspondence.*—The Censor may request the members of the Supervisory Council to [fol. 349] (page 40)

take action, or to indicate their respective decisions, or vote on any matter, through the medium of correspondence, without the necessity of any meeting.

SECTION 105.—*Removal from Office of Member of Supervisory Council.*—Each member of the Supervisory Council may be removed from office for malfeasance, or may be suspended for a definite term, by the affirmative vote of three-fourths ( $\frac{3}{4}$ ) of the members of the Supervisory Council.

SECTION 106.—*Filling of Vacancies in the Supervisory Council.*—In the event of death, resignation or removal from office of a District Commissioner, his successor shall be elected by the District where the vacancy occurs, and the election must be confirmed by a majority of the whole Supervisory Council. In the event of death, resignation or removal from office of the Censor, the Vice-Censor shall exercise the powers and perform the duties of the Censor, until the next Convention, and until his successor is elected and has qualified. In the event of death, resignation or removal from office of the Vice-Censor, his successor shall be elected by a majority vote of the whole Supervisory Council. In any event, the person so elected shall hold office until the next regular Convention and until his successor is elected and has qualified.

SECTION 107.—*Report to Convention.*—A printed report of all activities of the Supervisory Council shall be prepared, under the supervision of the Censor, and shall be mailed to each representative to the Convention, not less than twenty (20) days before each regular Convention.

SECTION 108.—*Powers.*—The Supervisory Council, in addition to other powers herein provided, shall have power to:

- (1) Act as the trial and appellate tribunal as provided in Article XXII.



- (2) Pass upon appeals of any member or body of the Alliance from decisions of the Censor as to, the

(page 41)

construction of any provisions of these By-Laws, or of any enactment or resolution of the Convention.

- [fol. 350] (3) Pass upon the appeal of any member of the Board of Directors, who has been suspended by the Board.

- (4) Render decisions on appeals above mentioned by a majority vote of all its members, which decisions shall be final.

- (5) Act as arbitrator, without right of appeal, in case of any controversy between any two or more lodges of the Alliance, or any two or more Councils, or between Councils and lodges.

- (6) Fill by a majority vote of all its members, vacancies caused by any reason in the elective offices of the Alliance by selection of officers who shall serve until their successors shall be elected by the next regular Convention and have duly qualified; vacancies in the membership of the Board of Directors shall be filled by election from a list of candidates presented by the Board.

- (7) Examine, and have full access to, the official records, books of account and all other documents and papers belonging to the Alliance and in the possession of the Board of Directors or of any officer, member or subordinate body of the Alliance; the right of such examination and access may be delegated by the Supervisory Council to an agent selected by it for that purpose.

## Article XI

### Board of Directors

SECTION 109.—*Who Constitutes.*—The Board of Directors shall consist of the President, Vice-President, woman

(page 42)

Vice-President, General Secretary, Treasurer, and ten (10) Directors as provided in Section 90. The Directors from Circuits B, C and D shall participate in the quarterly meetings of the Board of Directors, which shall be fixed by the Board in its rules and regulations.

[fol. 351] SECTION 110.—*Executive Committee*.—The President, Vice-President, woman Vice-President, Secretary and Treasurer shall constitute the Executive Committee, which shall consider such matters and perform such duties as the Board of Directors shall designate and authorize from time to time.

SECTION 111.—*Meetings*.—*Quorum*.—The Board of Directors shall hold regular meetings once a month and such special meetings of the Board as may be called by the President. A majority of the members of the Board shall constitute a quorum for the transaction of business.

SECTION 112.—*Compensation of Directors*.—The two vice-presidents and each director shall receive such allowance for attendance at each meeting of the Board of Directors and for special services in the interest of the Alliance and authorized by the Board, as shall have been fixed by the Convention at which they were elected, provided, no compensation shall be paid for meetings that they do not attend.

SECTION 113.—*Powers*.—The Board of Directors shall be the executive body and shall have the general management, and exercise the corporate powers of the Alliance, except when the Convention is in session. It shall have power to:

- (1) Organize and issue charters to councils, lodges and juvenile circles and revoke the same for cause.
- (2) Exercise supervision and control over districts councils, lodges and juvenile circles.
- (3) Collect rates, dues and all other revenues and exercise control over all funds, investments, and

(page 43)

property of the Alliance with power of disposition.

- (4) Prescribe forms of applications for membership, and forms, conditions, rates and amount of benefit

certificates and riders, and authorize the issuance thereof, when approved by the Supervisory Council.

- (5) Appoint secretaries of independent juvenile circles, and provide surety bonds for them, at the [fol. 352] expense of the Alliance, and for good and sufficient cause, remove any such secretary.
- (6) Reinstatè an insured member, who has been suspended by mistake, or where the suspension works an injustice to the member.
- (7) Suspend any member of the Board for malfeasance or neglect of his duties by a two-thirds ( $\frac{2}{3}$ ) vote of all the members of the Board, with right of appeal to the Supervisory Council.
- (8) Prescribe rules and regulations for the management of the business of the Alliance, and for all its subordinate bodies, in conformity with the provisions of these By-Laws and the enactments of the Convention.
- (9) Make, in behalf of the Alliance, such contracts, as it deems necessary, in connection with the business of the Alliance, subject to the provision, that no contract, engagement, or order for work, services or materials shall be entered into with any member of the Board of Directors or of the Supervisory Council, or with any officer of the Alliance, or with any person with whom he is related, or with a firm or corporation in which he is interested.

(page 44)

- (10) Fix and approve bonds of officers and employees of the Alliance as it shall determine, and the expense thereof shall be paid from the General fund of the Alliance.
- (11) Provide for bonds for the faithful performance of the duties of financial secretaries and treasurers of local lodges and representatives engaged in field work of the Alliance and prorate the premium of such bonds among the lodges and representatives in such manner as it may determine.

- (12) Prescribe the forms and provide for the distribution of all blanks, books and other documents, which may be necessary.
- (13) Pass orders, subject to the approval of the Supervisory Council, to govern any cases, which are not [fol. 353] provided for in the By-Laws of the Alliance, or by action of the Convention, provided that the Board shall not have power to change the By-Laws of the Alliance.

SECTION 114.—*Duties.*—It shall be the duty of the Board of Directors to:

- (1) Select banks of deposit for the funds of the Alliance, which shall be withdrawn only on the signature of the President, General Secretary and Treasurer.
- (2) Appoint, within thirty (30) days after each regular Convention, a General Counsel and a Manager of Publications.
- (3) Appoint an actuary and all necessary employees of the Alliance and ~~fix their compensation~~; and remove any employees for cause.
- (4) Examine and pass upon all claims against the Alliance and direct the payment thereof.

(page 45)

- (5) Publish quarterly, in the official paper of the Alliance, a financial statement.
- (6) ~~Furnish the Convention~~ all necessary information, certificates, documents and papers, which may be necessary in order that the Convention may verify the financial condition of the Alliance.
- (7) Print all reports of officers and mail them to each representative to the Convention not less than twenty (20) days before each regular Convention.
- (8) Perform such other duties as these By-Laws and Articles of Incorporation prescribe.
- (9) *Restriction.*—No member of the Board of Directors, no appointive officer nor employee in the

offices of the Alliance shall be, a representative to the Convention.

[fol. 354]

## ARTICLE XII

### THE CENSOR

SECTION 115.—*Power.*—The Censor shall be the ranking officer and representative of the Alliance; ex-officio, chairman of the Supervisory Council and temporary chairman of every Convention. He shall have power:

- (1) To appoint, subject to the approval of the Supervisory Council, all of its Committees, of which he shall be, ex-officio, a member, and to appoint Pre-Convention Committees as provided in Sections 62 and 63.
- (2) To appoint a secretary, who shall also be the secretary of the Supervisory Council and subject to its confirmation.
- (3) To cause an audit of all accounts and records of the Alliance, and examination and verification of

(page 46)

the same, as well as of the funds, properties and all other assets of the Alliance.

- (4) To approve and be the custodian of bonds required of the President, the Comptroller and of the Director of the Alliance College.
- (5) To construe the Constitution and By-Laws of the Alliance and enactments of the Convention, upon written request of any member or officer of the Alliance. His decision shall be final, unless an appeal be taken to the Supervisory Council within ten (10) days from the announcement of each decision.
- (6) To appoint, within thirty (30) days, after each regular Convention, and subject to the approval of the Supervisory Council, a Comptroller; to appoint within said time a Chief Editor of the publications of the Alliance from three (3) candidates presented by the Supervisory Council and such necessary

assistants as the Chief Editor may recommend to him.

[fol. 355] (7) To veto in writing, and within fifteen (15) days from the passage, adoption or enactment thereof, any resolution, act, action or proceeding of the Board of Directors, which he shall deem in contravention of these By-Laws or the enactments of the Convention or contrary to the interest of the Alliance, which veto may be overridden by a two-thirds ( $\frac{2}{3}$ ) vote of all members of the Board of Directors.

(8) The Censor shall be ex-officio the President of the School Commission, calling and presiding at all of its meetings, and appointing all of its committees, subject to the confirmation of the Commission. He is also Chairman of the Board of Trustees of the School Corporation as provided in Section 174.

(page 47)

SECTION 116.—*Duties*.—It shall be the duty of the Censor:

- (1) To maintain the office of the Supervisory Council and keep records of the expenditures of the office and report thereon to the Convention.
- (2) To issue to the membership, proclamations or appeals, required in the interest of the Alliance.
- (3) To call Special Conventions in accordance with the provisions of Section 59.
- (4) To issue, not less than three (3) months before each regular Convention, and publish in the official publication of the Alliance, the time and place of the Convention, and a message to the representatives, discussing the affairs of the Alliance, suggesting the matters to be considered by the Convention, and recommending necessary measures.
- (5) To call meetings of the Supervisory Council as provided in Section 103, and of the Committees thereof.
- (6) To promptly transmit to the Supervisory Council all appeals, petitions, complaints or grievances against members or officers of the Alliance.



[fol. 356] (7) To make prompt official announcements of all decisions or findings and resolutions of the Supervisory Council, or any of its Committees.

(8) To select annual passwords and furnish them to the General Secretary.

**SECTION 117.—Vice-Censor.**—The Vice-Censor shall perform the duties of the Censor during his temporary absence or inability to perform his duties. The Vice-Censor shall be ex-officio the Secretary of the School Commission.

(page 48)

**SECTION 118.—District Commissioners.**—It shall be the duty of each District Commissioner to:

- (1) Act as counsellor of the lodges and councils within his District.
- (2) Perform such services and activities in the interest of the Alliance, within his District, which may be requested by him by the Censor or the Board of Directors.
- (3) Render a written report of all his official activities at the request of the Convention, the Censor and the Board of Directors.
- (4) Call at such time and place, as he may select, at least once a year, a Convention for his District, for the purpose of discussion and recommendation of ways and means for the welfare and advancement of the interest of the Alliance in the District. Such Convention shall be composed of delegates elected by the Councils in the District, each Council being entitled to one (1) delegate for every four hundred (400) members, or a major fraction thereof. The Commissioner shall preside at such Convention and appoint the secretary thereof, but all other officers shall be elected by the delegates. The expenses of the Convention shall be borne by the Councils in the District.

**SECTION 118-A.—District Women Commissioners.**—It shall be the duty of each woman District Commissioner to:

- (1) Organize a district women division of which she shall be chairman.

[fol. 357] (2) Engage in such activities in the interest of the Alliance and its women members as the Board of Directors shall by rules and regulations prescribe.

(page 49)

### Article XIII

#### The President

**SECTION 119.—Powers and Duties.**—The president shall be the chief executive officer of the Alliance, and shall be charged with the responsibility of enforcing its By-Laws; shall preside at all meetings of the Board of Directors, and call all special meetings of the Board. His powers and duties shall be:

- (1) To appoint the members of all Committees established by the Board, and of all Commissions of the Alliance provided in these By-Laws.
- (2) To appoint representatives and agents, throughout the entire jurisdiction of the Alliance, who shall perform such duties, receive such compensation, and have such titles, as the Convention or the Board of Directors may determine.
- (3) To remove from office any collector of a juvenile circle when it shall appear to his satisfaction, from complaint filed by the General Secretary, that such officer is not performing his duties. In such case no trial shall be necessary, and the President may appoint, to such office, another qualified and competent person.
- (4) All appointments made by the President shall be subject to the approval of the Board of Directors.
- (5) To cause an audit at any time of the books and accounts of any lodge officer, and it shall be the duty of such officer to surrender immediately upon demand such books and accounts to the auditing officer for that purpose.
- (6) To exercise control over officers and employees of the Alliance, except as these By-Laws otherwise provide, and cause an examination and audit of their

[fol. 358] records and books as often as may appear to him to be necessary.

- (7) To suspend any officer or employee for misconduct, incompetence or neglect of duty and report such suspension at the next meeting of the Board.
- (8) To sign all checks drawn on the funds of the Alliance, in accordance with these By-Laws and Convention enactments, and sign all documents and papers that require officials signature to properly authenticate them.
- (9) To have in his custody all bonds of officers and employees and to devote his entire time and attention to the affairs of the Alliance and perform such other duties as shall be imposed upon him by these By-Laws or the Board of Directors.
- (10) He shall be ex-officio the Vice-President of the School Commission and Vice-Chairman of the Board of Trustees of the School Corporation, as provided in Section 174.

**SECTION 120.—Vice-Presidents.**—In case of temporary inability of the President to act, his duties shall be performed by the Vice-President, or in case of the latter's inability, then by the woman Vice-President. In case of the death, resignation or removal for cause of the President, the Vice-President, or in case of his inability, then the woman Vice-President shall exercise the powers and perform the duties of the President, with all rights and privileges of that office, until a successor has been elected in the manner provided by Section 108-(6). The Board of Directors shall fix the compensation payable to the Vice-President while temporarily discharging the duties of the President.

[fol. 359]

(page 51)

#### Article XIV

##### The General Secretary

**SECTION 121.—Duties.**—It shall be the duty of the General Secretary:

- (1) To designate, immediately, upon assuming the duties of his office, and subject to the approval of

the Board of Directors, an assistant General Secretary, who shall perform the duties of the General Secretary, during his temporary absence or disability, and who shall serve at the will of the General Secretary and the Board of Directors.

- (2) To keep accurate and complete minutes of all meetings of the Board of Directors, which shall be approved, as written or as corrected, at the next succeeding meeting, and sent, within ten (10) days, thereafter, to the Censor.
- (3) To have custody of the seal and all books and records of the Alliance, attest all official documents and affix the official seal thereon.
- (4) To keep an accurate and timely index of the reports, records, business and correspondence of the Alliance.
- (5) To keep true and correct accounts between the Alliance and the lodges and circles, and a correct list of all members of the Alliance.
- (6) To appoint, subject to approval of the Board of Directors, all necessary help for the proper discharge of his duties.
- (7) To prepare and file with proper authorities all documents, papers, certificates, amendments to these By-Laws, statements and reports, which may be required under the laws of the several States in which the Alliance is doing business.

(page 52)

- (8) To report to the Board of Directors all death benefit claims, and promptly cause to be published in [fol. 360] the official paper of the Alliance, all death claims reported, with the name and address of the deceased member and the number of his lodge.
- (9) To provide, under the direction of the Board of Directors, all supplies necessary for the use of lodges and juvenile circles for the transaction of the business of the Alliance.
- (10) To sign checks drawn on the funds of the Alliance, in accordance with these By-Laws.

- (11) To promulgate, under the seal of the Alliance, the decisions of the Censor and the Supervisory Council.
- (12) To send out annual passwords, prepared by the Censor, to presidents of local lodges.
- (13) To perform such other duties as the By-Laws of the Alliance or the Board of Directors require.
- (14) He shall be ex-officio the Auditor of the accounts of the School Commission, presenting the report of his examination thereof to the President of the Commission.

## Article XV

### The Treasurer

**SECTION 122.—Duties.**—It shall be the duty of the Treasurer:

- (1) To receive all moneys due to the Alliance from all sources, receipt therefor, and to deposit the same, in the name of the Alliance, in such banks or other institutions, as the Board of Directors may direct.
- (2) To make all disbursements in behalf of the Alliance, upon proper requisitions, but only by check

(page 53)

countersigned as provided in Section 114-(1).

- (3) To be the custodian of mortgages, notes, title papers, deeds, insurance policies, and all other valuable papers and documents of the Alliance.
- (4) To submit written reports of receipts, disbursements, funds on hand, and balance sheets to the [fol. 361] Convention, the Supervisory Council or the Board of Directors, whenever requested by any of them.
- (5) To place all policies of insurance, with respect to properties covered by loans of the Alliance, and with respect to properties of the Alliance, in such companies, with such brokers and in such amounts, as may be determined by the Board of Directors.



- (6) To appoint, subject to the approval of the Board of Directors, all necessary help for the proper discharge of his duties, and to perform such other duties as these By-Laws provide or the Board of Directors require.
- (7) He shall be ex-officio the Treasurer of the School Commission, receiving and receipting for all donations and gifts, and collecting all funds in behalf of the Commission and transmitting the same to the Treasurer of the Board of Trustees of the School.

## Article XVI

### General Counsel, Medical Director, Comptroller and Publications

**SECTION 123.—General Counsel.**—The General Counsel shall be a licensed attorney, graduate of a recognized law school, and shall have practised his profession, in any State, for at least five (5) years. He shall be the legal

(page 54)

adviser of the Alliance, and it shall be his duty:

- (1) To direct and control all litigation in which the Alliance is interested.
- (2) To appoint, subject to the approval of the Board of Directors, such assistants and employees as may be necessary, to the proper discharge of the duties of his office.
- (3) To refer any litigation, or other legal matter, pertaining to the Alliance, in any State, to a qualified local attorney, subject to the approval of the Board of Directors, and to perform such other duties as the Board of Directors shall determine.

[fol. 362] **SECTION 124.—Medical Director.**—The Medical Director shall be a licensed doctor of medicine, in the State of Illinois, a graduate of a reputable school of medicine, and a practitioner in his profession in any State for at least five (5) years. It shall be his duty:

- (1) To prescribe, subject to the approval of the Board of Directors, rules and regulations for lodge and juvenile circle medical examiners.
- (2) To appoint all lodge and juvenile circle medical examiners, from candidates submitted by Councils, and when in his judgment, a lodge or juvenile circle medical examiner is an unfit person to hold such office, to remove him and appoint his successor.
- (3) To appoint more than one (1) examiner in a locality, when in his judgment, the good of the Alliance requires it.
- (4) To report all appointments or removals of lodge and juvenile circle medical examiners to the Board of Directors for approval.

(page 55)

- (5) To examine and promptly report on all applications for beneficial membership, for increase of certificate benefits, and for reinstatement. His rejection of any application shall be final.
- (6) To pass upon all claims for total and permanent disability benefits.
- (7) To cause notice of rejection for beneficial membership, increase of certificate benefits, or reinstatement, to be sent, in a sealed envelope, to the beneficial secretary of the lodge, or to the collector of a juvenile circle, to which the applicant has applied for membership, or of which he is or was a member. In the organization of a new lodge or juvenile circle, notices of approval or rejection shall be sent to the organizer of the lodge or juvenile circle.
- (8) To appoint, subject to the approval of the Board of Directors, his necessary office help, to officiate daily at the offices of the Alliance, and perform [fol. 363] such other duties as the Board of Directors may provide.

SECTION 125.—*Comptroller*.—The Comptroller shall be a Certified Public Accountant, and it shall be his duty:

- (1) To exercise control over the accounts of all officers of the Alliance, and of all officers of sub-

ordinate bodies thereof, who collect, receive, disburse, manage or have in their custody funds belonging to the Alliance, and to demand, at any time, a written accounting from any such officer of the funds or other property of the Alliance in his custody or control.

- (2) To examine and verify all statements, demands and claims, against the Alliance, make recommen-

(page 56)

dations thereon, to the Board of Directors, and approve all requisitions for payment of the same.

- (3) To audit the books of the Alliance on request of the Censor or the Supervisory Council and submit a written report thereof.

- (4) To perform such other duties as the Board of Directors shall prescribe, and the Supervisory Council shall approve.

SECTION 126.—*Publications.*—The Board of Directors shall have power and authority to provide for and supervise, the publication of an official paper and other publications necessary to advance the interest of the Alliance, and appoint, in the manner provided in Section 114-(2), a manager in connection therewith and prescribe his duties. One (1) copy of each issue of the official paper shall be mailed to every member of the Alliance, the cost of such member's subscription being included in his monthly payments. The Chief Editor of all such publications and his assistants shall be appointed as provided in Section 115-(6). The policy of all publications of the Alliance shall be in harmony with the purposes of the Alliance. No publication shall be used for personal or partisan political purposes within the Alliance, nor in any way calculated [fol. 364] to lessen its prestige. Constructive criticism of persons occupying official positions or public offices, or of their acts, shall be permitted.

## Article XVII

### Councils

SECTION 127.—*Composition.*—*Division Of.*—Each Council shall be composed of lodges assigned to it by the Board

of Directors, which shall also designate each Council by a number. Whenever the number of members in good standing, of the lodges constituting a Council, shall exceed five thousand (5,000), the Board of Directors may, upon written petition of one-third ( $\frac{1}{3}$ ) of the lodges belonging to such Council, divide it into two (2) or more Councils,

(page 57)

with due regard to local distances and conditions.

SECTION 128.—*When Lodges May Constitute Councils.—Transfer of Lodges.*—A new lodge, admitted into the Alliance, shall be assigned, by the Board of Directors, to the nearest Council, unless such lodge shall be located more than thirty (30) miles from the meeting place of such Council, in which case, it shall itself constitute a Council, and shall be entitled to elect representatives to the Convention, in accordance with the provision of Section 55. A lodge may be transferred, from one Council to another, by the Board of Directors, for geographical reasons, when, in its opinion, such action is necessary in the interest of the Alliance, and it shall order such transfer upon the request, in writing, of two-thirds ( $\frac{2}{3}$ ) of the members of any lodge in good standing.

SECTION 129.—*Council Assembly.—How Constituted.—Duty of Lodge.*—The Assembly of each Council shall consist of delegates elected by the several lodges belonging to it. Each lodge shall be entitled to one (1) delegate for every twenty-five (25) members in good standing and a major fraction of that number. It shall be the duty of every lodge to participate in the activities of the Council to which it has been assigned.

SECTION 130.—*Delegates.—Qualifications.—Rights.*—Each lodge shall elect its delegates at the same time and [fol. 365] in the same manner as it elects its officers, and shall issue to each of its delegates, a mandate, signed by the president and recording secretary of the lodge, and bearing the official seal thereof. No person shall be elected as delegate to the Council Assembly, unless he has been a beneficial member of his lodge, in good standing, for at least two (2) years immediately preceding his election as such delegate, and who is not an officer, delegate, representative, agent or

employee of any other fraternal benefit society, association or corporation doing a life insurance business. A delegate

(page 58)

may be denied the right to participate in a Council Assembly by a vote of two-thirds ( $\frac{2}{3}$ ) of the delegates elected thereto, for any offense against the assembly while in session. No Council Assembly shall deny any delegate the right to exercise his functions in the Assembly for any other reason, except for lack of qualifications provided in this Section.

**SECTION 131.—*Meeting of Assembly.—Election of Officers.—Executive Board.—Quorum.***—The first meeting of the Assembly of each Council shall be held not later than March 1st of each year, at which there shall be elected a president, a secretary, and a treasurer, and such other officers as it shall deem necessary or the ritual may prescribe, who shall hold office until their successors are elected, and who shall constitute the Executive Board of the Council. Delegates representing one-third ( $\frac{1}{3}$ ) of the lodges of a Council shall constitute a quorum of an assembly for the transaction of business.

**SECTION 132.—*Duties of Council Assembly.***—It shall be the duty of each Council Assembly:

- (1) To fix the time and place for its regular meetings, and the time and place for the Electoral Assembly, in the regular Convention year, as provided in Article VIII.
- (2) To promote the formation of lodges and circles, and soliciting of members for the Alliance, under the direction of the Board of Directors.
- (3) To engage in such activities, which shall promote and advance the welfare and interest of the Alliance in the Council, in conformity with these By-Laws, and enactments of the Convention.
- (4) To fix and collect dues, which each lodge shall pay, for the needs and activities of the Council, provided that the amount of such dues shall have been passed, by the majority vote of members of



(page 59)

two-thirds ( $\frac{2}{3}$ ) of the lodges, and provided, that if a lodge shall refuse to pay such dues, or shall refuse to take part in the activities of the Council, it shall be denied the right to representation in the Council, and the right to participate in any rights or privileges in the Council, which may be provided by the Convention.

- (5) To adopt rules and regulations for the activities of the Council, which shall not conflict with the By-Laws of the Alliance, and the rules and regulations of the Board of Directors.

### Article XVIII

#### Lodges and Circles

**SECTION 133.—*Formation.***—Lodges and circles may be formed, in any territory within the jurisdiction of the Alliance, by the Board of Directors or its duly authorized representatives. Each lodge or juvenile circle shall consist of not less than twenty-five (25) beneficial members, provided that in localities, where there is no lodge or juvenile circle in existence, the number necessary to secure a charter shall be fifteen (15) members, and provided further, that each juvenile circle shall have not less than ten (10) members, age seven (7) years or above.

**SECTION 134.—*Charter.—Number and Name of Lodge.***—Upon receipt of a petition for charter and applications for membership, duly approved by the Medical Director, the Board of Directors may grant a charter to a new lodge or juvenile circle, if in its opinion, such action will promote the best interest of the Alliance. The Board of Directors shall designate each lodge by a number and shall give it [fol. 367] such name as may be selected by it and approved by the Board and shall assign it to a specified Council. No lodge may select for its name, either the name of a living person, or the name of any other lodge, and it shall not change its name without the consent of the Board of Directors.

(page 60)

**SECTION 135.—*Juvenile Circles.—Payments of Rates.***—A circle sponsored by a lodge shall bear the number of the

lodge, the rates being paid to the financial secretary. An independent circle, without sponsorship, shall be designated by a name approved by the Board of Directors, and the rates shall be paid to a secretary appointed by the Board of Directors.

. . . . .

**SECTION 137.—Meetings.—Quorum.—Order of Business.**—A lodge shall hold regular meetings at least once a month on the day fixed by its By-Laws, or by resolution. The date of the monthly meeting, and any changes thereof, shall be filed with the General Secretary. Not less than seven (7) members shall constitute a quorum for the transaction of business in any lodge, but a less number may act upon applications for membership and initiate duly elected members. The order of business for each lodge shall be that prescribed by the ritual of the Alliance.

**SECTION 138. — Self-Government. — Representation. — Powers.**—Every lodge shall have the right of self-government, and shall be entitled to participation in the activities of the Council, to which it has been assigned, and to representation in the Electoral Assemblies of the Council and the Conventions, upon the same conditions, and subject to the same requirements as apply to every other lodge in the Council, and as may be fixed, from time to time, by the Convention. A lodge shall have power to induct members, in accordance with the ritual prescribed by the Alliance, to adopt and amend By-Laws for its government, which shall not be in conflict with the By-Laws of the Alliance, and rules

(page 61)

and regulations of the Board of Directors, and to provide for its own support.

. . . . .

[fol. 368] **SECTION 142.—Property—Division of—Right of Member to Property.**—A lodge shall be the owner of, and exercise exclusive control over its property, which shall not be divided in any manner among its members, nor between a lodge and another that may branch from it, without the assent of two-thirds ( $\frac{2}{3}$ ) of all the members in good standing, which assent shall be ascertained by a roll call

vote to be taken at a regular meeting of the lodge, provided that notice of such contemplated action shall have been

(page 62).

given to each member before such meeting, and provided, that if regular meetings are no longer held, the consent in writing of two-thirds ( $\frac{2}{3}$ ) of the members shall be required. The right, title and interest of a member in the property or funds of the lodge shall cease by reason of the death, suspension, expulsion or withdrawal of such member.

SECTION 146.—*Property of Dissolved Lodges.*—When a lodge is permanently suspended, dissolved, or when its

(page 63)

charter is revoked, it shall be the duty of its last officers to deliver to the Board of Directors, or its authorized representative, the books, charter, seal, papers and records of the lodge, together with all money in the hands of the lodge officers, which has been paid in as monthly rates, assessments, or per capita tax, and such property shall become the property of the Alliance. The property of the lodge shall be subject to disposition by the members thereof as provided in Section 142.

## ARTICLE XIX

### LODGE OFFICERS AND THEIR DUTIES

SECTION 149.—*Titles and Qualifications.*—The officers of a lodge shall be: president, vice-president, recording secretary, financial secretary, treasurer, sergeant-at-arms and doorkeeper, who shall be elected as provided in the next following Section. Each officer must be a beneficial member in good standing of the lodge for at least two (2) years at the time of his election, or if a lodge has not

(page 64).

been in existence for two (2) years, then since its obtaining a charter. No lodge officer shall act as an officer, repre-

sentative agent or employee for another fraternal benefit society, association, or corporation doing a life insurance business. Violation of this restriction shall result in immediate forfeiture of his office in the lodge.

**SECTION 150.—*Election and Term of Office.***—Lodge officers and delegates to the Assembly of the Council shall be nominated and elected at the regular monthly meeting in December of each year. Elections shall be conducted in the manner provided by the lodge, but shall be by secret written ballot, provided, when only one (1) candidate is nominated for an office, he shall be declared elected without ballot. Each elected officer and delegate shall hold office for one (1) year, and until his successor is elected and installed.

**SECTION 152.—*Vacancies.***—A vacancy in an elective office in the lodge, may be filled by the lodge, at any time, after such vacancy has been declared and the member serving in this position for the unexpired term, shall be entitled to the full rights and privileges of the office.

(Page 71)

## ARTICLE XX

### COMMISSIONS

**SECTION 164.—*Appointments.***—Within thirty (30) days after each regular Convention, the President shall appoint, subject to the approval of the Board of Directors, the following commissions: The Educational Commission and the Youth Commission.

**SECTION 165.—*Qualification and Compensation.***—The members of each of said commissions shall be members of the Alliance in good standing, and each of them shall hold [fol. 370] office for four (4) years, and until the appointment and qualification of his successor. Every member shall perform his duties without compensation, with the exception of such traveling expenses incurred by him, while engaged in the business of the Alliance, and such per diems,

as the Convention or the Board of Directors may, from time to time, provide.

**SECTION 166.—*The Educational Commission—Duties.***—The Educational Commission shall consist of five (5) members, each of whom shall be a resident of the City of Chicago, Illinois, or of the immediate vicinity of that city. It shall be the duty of this Commission to:

(Page 72)

- (1) Manage, and prescribe, subject to the approval of the Board of Directors, rules and regulations for, the library and historical museum of the Alliance.
- (2) Engage in such activities intended to promote the education and culture among the membership of the Alliance, as the Convention may authorize.

**SECTION 167.—*Youth Commission—Duties.***—The Commission shall consist of three (3) members of the Board of Directors. It shall be the duty of this Commission to:

- (a) Direct, under the control of the Board of Directors the youth movement in the Alliance having for its object the physical, moral and cultural education of the Alliance youth, in a spirit of patriotic citizenship according to the principles of the Alliance.
- (b) Funds for the youth movement shall be appropriated by the Convention.

**SECTION 168.—*Rules—Vacancies—Quorum.***—The Board of Directors shall prescribe rules for the activities of each of said Commissions, and may remove any member thereof, and fill vacancies therein. A majority of the members of each Commission shall constitute a quorum, at any meeting, for the transaction of business.

**SECTION 169.—*School Commission.***—The School Commission shall be composed of the members of the Board of Directors, and of the Supervisory Council. The Censor, as [fol. 371] President of the School Commission, shall call meetings of the Commission at his direction, but shall be obligated to do so, within thirty (30) days, when requested, in writing, by a majority of all the members of the Convention. The quorum necessary to transact business shall con-



(Page 73)

sist of one-third ( $\frac{1}{3}$ ) of the members of the Supervisory Council, and one-third ( $\frac{1}{3}$ ) of the members of the Board of Directors.

**SECTION 179.—Powers and Duties.**—The School Commission shall:

- (1) Supervise and control the Alliance School at Cambridge Springs, Pa.
- (2) Enact all By-Laws, Rules and Regulations for the management of the School Corporation and change, repeal or amend the same in conformity with the Articles of Incorporation of the School Corporation and these By-Laws, provided, that no changes in the Articles of Incorporation shall be made by the School Commission before the same shall have been approved by the Convention.
- (3) Provide suitable sources of income for the School Corporation to assure the development of its activities.
- (4) Elect, and fill vacancies in, the Board of Trustees of the School Corporation.
- (5) Demand the resignation of, or remove from office, any member of the Board of Trustees, who shall fail to properly discharge his duties.
- (6) Render a report and account of the activities of the School Corporation, through its officers, to the Convention.

## ARTICLE XXI

### THE SCHOOL CORPORATION

**SECTION 171.—Who Constitutes.**—Every member of the Alliance in good standing shall be a member of the School Corporation, organized and existing under the laws of the [fol. 372] State of Pennsylvania, which Corporation owns and operates Alliance School at Cambridge Springs, Pa.

(Page 74)

This Corporation has no capital stock and is a corporation not for profit. No member shall have any individual right,

title or interest in, or to the real or personal property of said Corporation.

**SECTION 172.—*Purpose.***—The purpose of the School Corporation shall be to maintain and carry on the said Alliance School, where students may obtain on moderate terms a sound education, literary, scientific, technical and other, offering equal advantages to all students having the requisite qualifications, irrespective of religious denomination, and to confer diplomas to those who become proficient in the various branches of literature, science, technology or other courses in accordance with rules adopted by the Board of Trustees. The education of the students in the Alliance School shall be conducted in a genuinely civic and patriotic spirit, and shall involve the unification of the best acquisitions of American culture and Polish culture. In view of the fact that a considerable majority of the students at the Alliance School are of the Roman Catholic faith, the School shall render possible to such students the observance of religious practices and duties prescribed by the Roman Catholic church.

**SECTION 173.—*Funds.***—The funds of the School Corporation shall be derived from public donations, bequests, tuition, and contributions from the School fund of the Alliance, as provided in Section 50.

**SECTION 174.—*Board of Trustees—Powers and Duties.***—The Board of Trustees shall be the executive and managing body of the School Corporation, and shall consist of the Censor, who shall be ex-officio chairman of the Board, the President of the Alliance, who shall be ex-officio its vice-chairman, and five (5) members of the Alliance, in good standing, with a college or university education, who shall be elected by the School Commission in the manner provided in its By-Laws. The selection of the members of the Board of Trustees shall be held, as soon as practicable, after each regular Convention, and each member shall hold

(Page 75)

[fol. 373] office until the next regular Convention, and until his successor has been elected and has qualified. The Board of Trustees shall, with the approval of the School Commission, establish all rules and regulations for the

operation of the Alliance School, and shall be accountable to the School Commission. The Director and the Faculty of the School shall be accountable only to the Board of Trustees, and shall be under the control of that Board. The Board of Trustees shall make no expenditure, for any purpose, in excess of Five Thousand Dollars (\$5,000.00), unless such expenditure has first been approved by the School Commission.

**SECTION 175.—*Election of Officers.***—The Board of Trustees shall, immediately after the selection of its members, convene at the home of the Alliance School, and, from among its members, shall elect other officers of the School Corporation, as provided in its By-Law, each of whom shall serve until the next regular Convention, and until his successor has been elected and has qualified.

**SECTION 176.—*Compensation.***—The members of, the School Commission and officers and members of the Board of Trustees shall serve without compensation with the exception of such per diem and travelling expenses, as the Convention may provide, which shall be paid from the School fund.

## ARTICLE XXII

### DISCIPLINARY PROVISIONS

**SECTION 177.—*Offenses for Which Member may be Punished.***—The following are declared the offenses against the Alliance for the commission of which a member may be punished by, removal from office he may hold, fine, reprimand, suspension or expulsion:

- (1) Violation of the By-Laws of the Alliance, enactments of the Convention, or neglect of any duty imposed thereby.

(Page 76)

- (2) Embezzlement, or willful withholding of any funds or other property of the Alliance, or of any of [fol. 374] its subordinate bodies, upon demand therefor by proper authority.
- (3) Making willfully untruthful answers, which affect either the acceptance of the risk or the hazard assumed by the Alliance, to any questions in his

application for membership and medical examination, or in any application for increase or benefits or for reinstatement, or in a declaration of insurability, if used in lieu of a medical examination.

- (4) For perpetration of, or attempt to perpetrate, any fraud upon the Alliance, or any of its officers or subordinate bodies.
- (5) Institution of any litigation against the Alliance or its subordinate bodies, without having first exhausted all remedies available under this Article.
- (6) Collection or disbursement of money for the purpose of defeating the By-Laws of the Alliance or enactments of the Convention.
- (7) Willful insubordination or contempt of a superior authority of the Alliance.
- (8) False and malicious saying, writing or publishing of any statement injurious to the Alliance, or calculated to affect its general interest unfavorably or to bring its officers into disrepute or contempt.
- (9) Conviction in any court of law of a criminal offense of the grade of felony, which judgment of conviction has been final under the laws of the jurisdiction in which such judgment was rendered, excluding cases where the person convicted had his civil rights restored.

SECTION 178.—*Additional Offenses.*—Each lodge may de-

(Page 77)

fine additional offenses related to conduct unbecoming a member of the lodge, provided, that offenses so defined shall not subject the member to expulsion from the Alliance.

(Page 79)

[fol. 375] SECTION 184.—*Effect of Suspension or Expulsion.*—A member, who has been suspended by action of a Trial Tribunal, shall be deprived of all rights and privileges of every nature whatsoever, in the lodge and the Alliance, except the right to make payments to maintain

and keep in force his benefit certificate. Such member may keep any certificate or certificates in full force and effect by the payment of all rates, fines and dues, and by further complying with all the By-Laws of the Alliance. A member who has been expelled by action of a Trial Tribunal shall forfeit his membership in the Alliance, and his benefit certificate shall become null and void, provided, that in such case he shall be entitled to receive the cash value, if any, under such certificate.

SECTION 185.—*Appeals*.—Appeals from the decision of a Trial Tribunal shall be made directly to the Supervisory Council, and shall be heard in the manner determined by it. The complainant and the accused shall have the right to appeal. In the absence of a written notice of appeal, within the time specified in the rules of procedure, the decision of the Trial Tribunal shall be final. All decisions of the Supervisory Council on appeals, shall be by the vote of a majority of the members thereof, except decisions imposing the penalty of removal from office or of expulsion, which shall be by vote of two-thirds ( $\frac{2}{3}$ ) of the members of the Supervisory Council. The decision of the Supervisory Council may affirm, modify in whole or in

(Page 80)

part or reverse the decision of the Trial Tribunal. All decisions of the Supervisory Council shall be final and unappealable.

SECTION 186.—*Litigation Prohibited*.—No member officer, council or lodge shall institute any litigation with respect to any matter properly cognizable under the provisions of this Article, until he or it has first exhausted all the remedies provided by this Article.

[fol. 376]

## ARTICLE XXIII

### AMENDMENTS TO THE CONSTITUTION AND BY-LAWS AND ARTICLES OF INCORPORATION OF THE ALLIANCE

SECTION 188.—*Amendments to Constitution and By-Laws*.—The Constitution and By-Laws of the Alliance may be amended by a majority vote of all representatives present and qualified to vote at a regular Convention or a Special



Convention, called for that purpose. Each lodge council or the Board of Directors may submit a proposed amendment in writing signed by its respective officers, to the Censor at least ninety (90) days before the opening session of the Convention. After certification of the proposed amendments as to their legal effect by the General Counsel, they shall be delivered to the Committee on Laws and By-Laws.

SECTION 189.—*Adoption—When Effective.*—No amendment shall be considered or adopted at any Convention unless it has been filed, as set forth in Section 188, provided however, that the Convention may, by a three-quarter ( $\frac{3}{4}$ ) vote, make additional changes and amendments as in its judgment may deem proper. All amendments shall take effect thirty (30) days after the closing of the Convention, unless otherwise ordered by the Convention.

SECTION 190.—*Amendments Between Conventions.*—The

(Page 81)

Constitution and By-Laws of the Alliance may also be amended as follows: In case of an urgent emergency the Board of Directors with the approval of the Supervisory Council may, by a majority vote, propose an amendment in the form of a resolution, setting forth the change to be made. Such resolution shall be certified by the President and the General Secretary, under the seal of the Alliance, and a copy thereof, together with a ballot for voting for or against any such amendment, shall be mailed to each member of the Convention entitled to vote on such amendment, at his last known post office address, as shown by the books of the General Secretary. The ballot shall be voted and signed by the person to whom addressed, within [fol. 377] thirty (30) days after the mailing out of said resolution and ballot, and mailed to the General Secretary. The Board of Directors shall promptly canvass the ballots and declare the result of the vote. If the result of the vote as so declared discloses that a majority of the persons entitled to vote on the proposed amendment have voted in favor of such amendment, then such amendment shall take effect and become in full force as a By-Law of the Alliance from the date the result of the vote was declared, and shall remain in full force and effect until repealed or amended in the manner in these By-Laws provided. Each such

amendment when adopted shall be published in the next succeeding issue of the official paper of the Alliance.

**SECTION 191.—*Amendments to Articles of Incorporation.***—The Articles of Incorporation of the Alliance may be amended at any session of the Convention by adoption, by two-thirds ( $\frac{2}{3}$ ) vote of the members present and entitled to vote, of a resolution setting forth either the amendments proposed, or the Articles of Incorporation as they will read, if the resolution is adopted, and shall become effective upon compliance with the provisions of the laws of the State of Illinois.

**SECTION 192.—*Repealing Clause.***—The Constitution, Laws, By-Laws, Rules and Regulations of the Alliance,

(Page 82)

heretofore existing and in conflict with the foregoing Constitutions and By-Laws are hereby repealed.

• • • • •

(Page 1)

January, 1941—1,500

## REVISIONS OF SECTIONS OF THE CONSTITUTION AND BY-LAWS OF THE P. N. A.

AS RECONCILED BY THE SUPERVISORY COUNCIL AND THE BOARD  
OF DIRECTORS, SEPT. 21, 1940, BY THE AUTHORITY OF THE  
XXVIII CONVENTION OF THE P. N. A.

**SECTION 18.—*Forms and Rates.***—The Alliance may issue benefit certificates upon such forms and plans, which shall [fol. 378] provide for such benefits and privileges, with such premium rates, and on such mortality basis and interest assumption, subject, however, to the provisions of subsection (1) of Section 48 hereof, all as may from time to time be prescribed by the Board of Directors, and permitted by the laws of the State of Illinois or the laws of other states in which the Alliance is authorized to do business. The rates for all plans adopted are specifically made a part hereof and shall be published in the official Rate Manual.

**SECTION 23.—*Special Assessments.***—The Board of Directors shall have power, should any emergency or contingency

arise, or the funds or reserves of the Alliance become impaired, to levy special assessments on each beneficial member in such amounts as it may determine to be necessary. In such case notice shall be given by the General Secretary to the respective lodge financial secretaries of the amount of any special assessments to be paid by each member, and each lodge financial secretary shall, thereupon, notify each member of the amount due from him, and each such member shall, within the time specified, pay such assessment to the financial secretary. If any such assessment be not paid

(Page 2)

within the time specified, it shall be charged against the certificate of the member, bearing interest at the rate of not more than five (5) percent, compounded annually, from the time of notice of such assessment.

SECTION 26.—*Participation in Surplus*.—Whenever, in the judgment of the Board of Directors, it shall become advisable to apportion to the members any surplus in the benefit fund, such apportionment shall be made on the basis of each member's contribution to such surplus, after the reserves and other liabilities are determined and contingent reserves are set aside in an amount not less than five (5) percent of the then existing liability, including therein the tabulary reserves.

SECTION 36.—*Funeral Benefits*.—If, on the death of a member, no provision is made by the beneficiary or family of the deceased for payment of the funeral expenses, the Board of Directors may authorize the payment of such [fo: 379] funeral expenses as may reasonably appear to it to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by burial of the member; provided, the funeral benefits shall not exceed the sum of Two Hundred Dollars (\$200.00) and shall at all times conform to the limitations imposed by the laws of the respective states, wherein the Alliance may be authorized to do business, and shall be deducted from the proceeds of the certificate, and the remaining sum shall be the amount to which the beneficiary shall be entitled.

SECTION 41.—*Board of Directors to Determine Liability*.—The Board of Directors shall have exclusive authority, within the Alliance, to determine the liability of the Alliance for benefits, and it is hereby given full power and

authority to settle, by compromise or otherwise, any disputed death, accident or disability claim when in its judgment the best interest of the Alliance require it.

. . . . .

(Page 3)

SECTION 48.—*Apportionment of Rates.*—The funds from which benefits shall be paid and the expenses of the Alliance defrayed shall be derived from periodical or other payments by the members of the Alliance.

- 1) The payments for death benefits shall be not less than such amounts as shall be sufficient to meet the mortuary obligations contracted when valued upon the basis of the National Fraternal Congress Table of Mortality, or other mortality standard authorized by law, with interest assumption of not more than four (4) percent per annum; and no part of such payments or the net accretion thereof shall be used for expenses.
- 2) The payment for disability or other supplementary benefits, if granted, shall be computed from tables based upon reliable experience.
- 3) The payment for the School fund shall be three (3) cents per month for each adult member.

(Page 4)

- 4) The proportion of the payments available for expense shall be only the remainder of the gross [fols. 380-383] payments after making the apportionment herein set forth.
- . . . . .

ADDENDUM: Section 113-(9). Make, in behalf of the Alliance, such contracts, as it deems necessary, in connection with the business of the Alliance, subject to the provision, that no contract, engagement, or order for work, services or materials shall be entered into with any member of the Board of Directors or of the Supervisory Council, or with any officer of the Alliance, or with any person with whom he is related, or with a firm or corporation in which he is interested, excepting therefrom, however, the solicitation of new members.

. . . . .

## [fol. 384] BOARD'S EXHIBIT NO. 9

Board's Exhibit 9 is the Annual Statement in the form for Fraternal Orders, of the Polish National Alliance of the United States of North America, for the year ending December 31, 1941, of its condition and affairs. The Report is made to the State Insurance Department. It shows (II) an Annual Income in 1941 of \$5,717,344.09, of which \$3,723,365.21 was received from members, and \$1,690,250.57 received from investments. During the same period, benefits paid (III) totalled \$1,845,126.33. Total admitted assets (IV) \$30,090,835.94. Total Liabilities (V) \$28,277,779.31.

Distribution of assets and liabilities according to funds:

1. Adult Mortuary Fund \$28,997,973.40.
3. Benevolent Fund \$137,704.87.
4. Juvenile Mortuary Fund \$812,056.24.
5. Expense Fund \$143,101.43.
6. Total Benefit Certificates in force December 31, 1941, 272,897, of the value of \$159,683,583.00.

Chap. XII certifies that the Respondent is organized and conducted on the Lodge System, with ritualistic form of work and representative form of government, and that it has 1817 Lodges which hold meetings once a month and which are represented in the Supreme or Governing Body by elected delegates on the basis of one delegate to each 400 members. That the regular meeting of the Governing Body is held every four years, and the last one in September 1939 attended by 534 members of which all of them were delegates from the subordinate lodges.

That the officers and directors are elected at the Supreme Convention by delegates, and members are Polish by birth, descent or affiliation. That the minimum and maximum insurance are \$500.00 to \$5000.00. That the beneficiaries may be family heirs, affianced husband or wife, step-children, step-parents and dependent persons. The expenses of the Governing Body are defrayed by first year assessment and dues. That the Respondent promises to pay the beneficiaries a definite amount which is guaranteed by Reserve Funds or Special Assessment. That the Respondent is authorized to transact business, and does transact business in 27 States: And District of Columbia; and Province of Manitoba, Canada.

The Statement shows, under Schedule "A", Part 1, Real Estate owned in Illinois of the market value of \$9,223,443.34; In Indiana \$1,586,557.73; In Michigan \$14,829.48;



In New York \$25,193.12; In Wisconsin \$7,954.14; In the Juvenile Branch, the Annual Statement shows Real Estate owned in Illinois of the market value of \$293,561.40; In Indiana \$49,645.85.

Under Schedule D-Part 1, Respondent shows the ownership as of December 31, 1941, of United States Government Bonds in the sum of \$2,451,056.25. Foreign Governments \$14,797.12. Louisiana State Bonds \$160,254.64 book value. Bonds issued by Political subdivision of States in such States as New Jersey, Maryland, Tennessee, Florida, Texas, Illinois, Kentucky, West Virginia, Alabama, Mississippi, Pennsylvania, Washington, Michigan, in the amount of \$5,981,608.98 book value. In the Bonds of various Railroads of United States and Canada \$1,694,491.08 book value. In Public Utilities Bonds of Public Utilities in several States such as Arkansas, California, Ohio, Illinois, Iowa etc., \$1,007,461.83 book value. In Industrial Bonds \$1,749,275.41 book value.

The Statement shows under Schedule "N" Bank Balance carried in Banks in Illinois and Indiana, as of December 31, 1941, \$910,898.15, and in the Juvenile Branch \$86,823.10.

[fol. 386]

BOARD'S EXHIBIT No. 10

### Polish National Alliance

The Largest Fraternal Organization in the World  
of Americans of Polish Descent

(Emblem)

New Home Office: 1514-20 West Division Street, Chicago,  
Illinois

Manual Containing General Information, Premium Rates  
and an Analysis of the Value of Certificates of Insurance  
for Both Adult and Juvenile Members of the Polish  
National Alliance of the United States of North America

Important! The new premium rates listed in this Manual  
apply to new members insuring themselves on  
and after January 1, 1938, and to increase of  
insurance or change of certificates by mem-

bers who were insured on or prior to December 31, 1937.

Second Edition

1940

Printed by: Alliance Printers and Publishers, Inc., 1406-08  
West Division Street, Chicago, Illinois

To All Members of the Polish National Alliance.

DEAR BROTHER AND SISTER MEMBERS:

From the simple and modest beginning of sixty years ago, the Polish National Alliance in recent times has greatly [fol. 387] expanded and developed into a large fraternal insurance organization. While ideologically it has remained ever true to its principles and today pursues its ideals with vital eagerness, through its expansion it has entered the field of sharp competition of business institutions.

Meeting the challenge of new demands, we have, of necessity, introduced more efficient business methods, invited new suggestions, and discarded outmoded plans of operation. Accordingly, in the last few years a large variety of marketable certificates of insurances have been issued, ranging from the ordinary life type to that of the endowment kind, which is turn called for a manual, explaining this increase and change of insurance.

This manual represents a revision as well as a substantial enlargement of its predecessor, published in 1938. Its purpose is to furnish to our organizers primarily, information about the new certificates. In a concise, yet untechnical arrangement, the manual presents the various tables of rates, explanation of the non-forfeiture values and a summary of insurance principles and practice.

It is earnestly hoped that this new effort on our part will facilitate the work of our organizers and acquaint our brethren with the new development in our program, and thereby result in a constant and substantial membership increase. For your loyal, untiring and generous efforts of the past, we are pleased to express our sincere appreciation and trust that your efforts will not diminish.

Fraternally yours, I. K. Rozmarek, Prezes Z. N. P.;  
A. S. Szczerbowski, Sekretarz Jen. Z. N. P.

## Part One

### The Polish National Alliance

#### General Information

##### Adult Members

The Polish National Alliance issues five (5) forms of insurance for adults, both men and women, as follows:

- 1) Ordinary Life
- 2) 20-Year Payment Life
- 3) 20-Year Endowment
- 4) Endowment at Age of 65.
- 5) Combined Term and Paid-up at age of 65.

The premium rates on each form of insurance and certificate values of the respective forms are explained in a separate section of this manual; there the applicant may select the plan of life insurance best suited to his or her requirements.

##### Mortality and Interest

The premium rates on all certificates of insurance, and also the reserves, are computed on the basis of the American Experience Table of Mortality with interest at the rate of three per cent (3%) per annum, according to the Illinois standard basis. These assumptions are the most conservative used by American life insurance firms. "Illinois standard" is a technical phrase, which denotes that the first-year premiums on the higher premium types of insurance, as the 20-Year Endowment plan, may not be used to defray the cost of enrolling a member in a larger amount than is permitted on 20-Year Life certificates.

##### Age Limitation

Adults, both men and women, between the ages of 16 to 60 years, exclusively, are eligible for admission into the Alliance; likewise, persons who are 15 years and 6 months old, and also those who have attained the age of 60 years, 5 months and 28 days, may be admitted. The only exception [fol. 389] is table 5, under which plan no one may insure himself for less than \$1,000, nor anyone above age 40.

### Applications

In no case may an application for insurance be completed with a pencil or on a typewriter. All applications

(page 3)

must be fully and correctly filled out in ink. Should it appear necessary to make a correction, the same must be written in the margin opposite the original question and answer. The first and last names of both the applicant and the beneficiary must be written clearly and in full. A middle initial is permitted. A married woman applying for insurance should give her own Christian name and the surname of her husband, as for example, Mary L. Kowalska, and not, Mrs. Joseph J. Kowalski.

Every application should contain the correct date and place of birth of the applicant, as this is of the utmost importance. In case of doubt, the organizer should secure proof of the correct date of birth.

### Non-medical Applications

Adults between the ages of 16 and 35, inclusive, insuring themselves for \$1,000.00 or less, are not required to submit to a medical examination. In such cases special non-medical applications must be filled out. In the event of any question, however, as to the health of the applicant and the truthfulness of his statements, the Alliance reserves the right to demand a medical examination.

The laws of certain states prohibit the use of non-medical applications, therefore, applicants from such states must undergo a medical examination.

### Medical Examination

All adult candidates for membership and insurance in the Alliance, who are 36 years of age and older, must pass a medical examination, regardless of the amount of insurance applied for. The same applies to persons between [fol. 390] the ages of 16 and 35, who insure their lives for an amount higher than \$1,000.00.

Applicants for juvenile certificates of insurance, who are less than 16 years of age, are not required to submit to a medical examination, however, the person completing the application for the juvenile applicant is required to

confirm the status of his health.. No person related to the child, as a father, mother, or a guardian, is allowed to vouch for its health. In such cases the officer of the Lodge

(page 4)

or organizer not related to the child-applicant is required to confirm the status of its (child's) health.

The Alliance may require a medical examination of any juvenile applicant whose application indicates questionable insurability.

The fee for the medical examination will be paid by the Alliance directly to the examining physician.

The organizers are obligated to exercise reasonable judgment with respect to accepting applications from doubtful risks. If an organizer completes an application for an obviously unacceptable applicant, the fee for the medical examination may be charged against his account with the Alliance.

The voucher attached to Part 2 of the application should be filled out by the examining physician, and when detached at the Home Office of the Alliance, will constitute his bill for the examination. Examiners' fees will be paid monthly by the Alliance.

#### Amount of Insurance

The lowest amount of insurance obtainable in the Alliance is \$250.00, but only under the following tables: 1, 2, 3, and 4. The lowest amount of insurance available under table 5 is \$1,000.00 and the highest \$5,000.00.

Every adult between the ages of 16 and 50 years may insure his life for either \$250.00 or any intermediate amount up to and including \$5,000.00. The highest amount of insurance available for persons between the ages of 51 and 60 under forms 1 and 2 is \$1,000.00, while persons [fol. 391] older than age 56 cannot obtain insurance under either Table 3 or 4. Between the ages of 51 and 55, however, the highest amount of insurance on table 3 or 4 is \$1,000.00.

Any adult person up to the age of 40, inclusively, may insure his life under Table 5 for the following amounts: \$1,000.00, \$1,500.00, \$2,000.00, \$2,500.00, \$3,000.00, \$3,500.00, \$4,000.00, \$4,500.00 and \$5,000.00.

A member may hold more than one certificate, and be insured under more than one plan of insurance, but the



total of all certificates of insurance upon any one life shall not exceed the face amount of \$5,000.00.

(Page 5)

#### Purpose of the General Fund Assessment

The general fund assessment, which to date of December 31, 1937, was paid by each and every member of the Alliance, and which from date of January 1, 1938, is included in the premium rates on the insurance, and constitutes and is computed as a part thereof, and which is included as part of each and all of the premium rates on adult insurance contained in this manual, is regulated by

(Page 6)

each succeeding convention of the Alliance, in the form of an amendment to the Constitution, By-Laws, Rules and Regulations of the Alliance, which last comprise and are a part of every contract of insurance.

The conventions of the Alliance decide the purposes for which the general fund assessment may be used, as well as the distribution thereof, as for example, administration expenses, "Zgoda"—official organ of the Alliance, convention fund, as also for social, educational and relief purposes, and for the Alliance College.

Notwithstanding that the general fund assessment is included in all of the premium rates on adult insurance found in this manual, each of the succeeding conventions of the Alliance shall have the right to regulate the same in any manner that it shall deem proper.

[fol. 392]

#### Mode of Payment

Premiums may be paid annually, semi-annually, quarterly or monthly, at the option of the insured, and the insured may change the mode of payment at any time. Premiums are computed on what is known as the selective basis; that is, annual premiums are figured on the annual basis, monthly premiums on the monthly basis, etc. If the insured dies during a certificate year for which the full year's premium has not been paid at time of death, the Alliance makes no deduction for the unpaid balance of the year; provided, however, that the premiums due thereon and

either charged to or advanced by the local Lodge to which the Insured belonged, shall be deducted from the death benefit. Conversely, the Alliance allows no refund if death occurs before the expiration of the period covered by the last premium paid. The discount as between twelve monthly premiums and the annual premium is considerably greater because of this than would be possible if the annual premium were computed so as to permit refunding that portion covering the period in advance of the date of death.

All premiums, except the first, are payable to the Financial Secretary of the Lodge, or to a Collector authorized by the Lodge so to act.

(Page 9)

Dividends

All certificates of insurance of adults, issued by the Alliance beginning with January, 1938, as follows:—1.) Ordinary life, 2.) 20-Year payment life, 3.) 20-Year endowment, 4.) Endowment at age of 65 and 5.) Combined Term and Paid-up insurance at age 65, issued after January 1st, 1940, are eligible for the payment of dividends after being in force for two years, that is, commencing on the second certificate anniversary, and annually thereafter, as long as the insured pays the premiums regularly. Each may be credited with dividends in such a sum as the Board of Directors of the Alliance shall ascertain from the divisible surplus of the Alliance accrued by reason of the income exceeding the amounts required.

(Page 10)

How Dividends May Be Applied

At the option of the Insured, the dividends may be taken or applied under any of the following options:—

1.) Withdrawn in cash when due.

2.) Placed on deposit with the Alliance, to accumulate interest compounded annually at such a rate as the Board of Directors of the Alliance may declare, but never less than three per cent (3%) per annum. The deposit may be withdrawn by the insured at any time, if living, and if not withdrawn by the insured while he is alive, it will be added

to the proceeds otherwise payable to the beneficiary or beneficiaries.

3.) Applied as a net single premium on the purchase of a paid-up addition to the certificate already in force, payable at the same time and under the same conditions as the face amount. Paid-up additions may be surrendered by the insured for their cash value at any time.

4.) Apply toward the payment of any premium due on the certificate anniversary, or to shorten the time of payment of the insurance.

(Page 11)

### Settlement Options

If the insured does not desire to have the death benefit paid in one lump sum, or as designated in the certificate, he may make a provision in the application, or at any later date after receiving the certificate, in writing, to have the proceeds of the certificate settled in accordance with any of the options here listed:—

1.) The total proceeds of the insurance, or an amount which shall be not less than \$800.00, may be kept on deposit with the Alliance, and the Alliance will pay interest to the designated payee at such a rate as the Board of [fol. 394] Directors shall determine, but never less than three (3%) per cent per annum. Interest will be paid annually, semi-annually, or quarterly.

2.) All or part of the proceeds of the insurance may be paid in fixed annual, semi-annual, quarterly, or monthly installments covering the period of time designated. If the insurance is paid in installments, the Alliance obligates itself to pay interest at the rate of three per cent (3%) per annum on the balance remaining with the Alliance. If the insured should die before receiving all of the installments called for, the computed value of the remaining installments, at 3% interest, will be paid to the appointed beneficiary or beneficiaries in one lump sum.

The Alliance reserves the right to limit income payments to amounts not less than \$10.00 monthly. If the amount

held by the Alliance is insufficient to provide an adequate monthly income, or monthly installments of at least \$10.00, the income or installments may be paid quarterly, semi-annually, or annually, as required.

The insured must designate whether or not the beneficiary or payee shall have the right to alter the method of settlement. If the insured states in the application, or later properly notifies the Home Office of the Alliance, that

(Page 12)

the beneficiary or payee may not change the mode of settlement, the Alliance will pay the proceeds in the manner in which the insured provided.

(Page 16)

## PART TWO

### Table 1

#### Ordinary, Whole Life Insurance

This plan is an ordinary, whole life insurance, on which premium payments are made for the duration of one's life and the full amount of the face value payable to the beneficiary or beneficiaries upon death of the insured.

[fol. 395]

#### Dividends

This type of insurance is participating, that is, it is eligible for dividends after being in force two years, and during each succeeding year as long as premium payments are continued. The payment of such dividends is subject to conditions and methods of its application, as explained on pages 9 and 10 of this manual.

#### Amounts Available Under This Plan

Under this form of insurance, or Table 1, one may insure his life for \$250.00, \$5,000.00, \$1,000.00 or any intermediate amount up to and including \$5,000.00.

(Page 20)

## Table 2

## 20-Year Payment Life Insurance

Premium payments under this form of insurance continue for 20 years and after the expiration of this period payments cease. In the event of death, no matter when it occurs, the full amount of the death benefit shall be paid to the beneficiaries designated in the certificate.

## Dividends

This type of insurance is participating, that is, it is eligible for dividends after being in force two years and during each succeeding year as long as premium payments are continued. The payment of such dividends is subject to the conditions and methods of its application, as explained on pages 9 and 10 of this manual.

(Page 22)

## Table 3

## Twenty-Year Endowment (Savings)

Premium payments under this form of insurance continue for the full 20 years, and at the expiration of said [fol. 396]

(Page 23)

period, the Alliance shall pay the full amount of the face value in cash.

## Dividends

This plan of insurance is participating and is eligible for dividends after the insurance certificate is kept in full force and effect two years, and during each succeeding year as long as premium payments are continued. The payment of such dividends is subject to the conditions and methods of its application, as explained on pages 9 and 10 of this manual.

## Payment of the Death Benefit

In the event of the death of the insured before the maturity of the certificate, that is before the expiration of the



20-year period, the beneficiary or beneficiaries shall receive the full amount of the insurance originally applied for.

#### Double Benefits

This form of insurance embodies a savings and term insurance feature which appeals to persons interested not only in the insurance but also the investment angle. In the event of survival, that is, upon the expiration of the 20 years, the insured will receive the full face amount of his certificate in cash. If death should intervene before the designated period expires, then the full amount of the death benefit shall be paid to the beneficiary or beneficiaries.

(Page 29)

#### Table 4

#### Endowment at Age 65

This form is an endowment insurance, which provides for payment of premiums to age 65, inclusively. At the end of the premium paying period, the Alliance shall pay in cash to the insured the full face amount of the insurance certificate.

[fol. 397]

(Page 30)

#### Dividends

Just as the forms previously explained, this type of insurance is participating, and is eligible for dividends after being in force two years and during each succeeding year as long as premium payments are continued. The payment of such dividends is subject to the conditions and methods of its application, as explained on pages 9 and 10 of this manual.

#### Payment of Death Benefit.

In the event of the insured's death before his 65th year, the Alliance shall pay to his beneficiary or beneficiaries the full amount of insurance.

#### Double Benefits

This type of insurance, like the 20-Year Endowment, embodies both a savings and term insurance feature. Upon

expiration of the premium paying period, or after reaching the age of 65, the insured shall receive in cash the full amount of his certificate. If death should occur before this period, then the full amount shall be paid to the beneficiary or beneficiaries.

(Page 33)

### Table 5

#### Combined Term and Paid-up Insurance at Age 65

Under the terms of this form of insurance, the insured pays his premiums until he reaches the age of 65 and in the event of death before that period of time, or before reaching the age of 65, the full amount of the benefit shall be paid.

If, on the other hand, the insured survives his 65th birthday, then the face amount of his certificate will be automatically reduced in half. Insurance for \$1,000 shall be [fol. 398] reduced to \$500.00, insurance for \$1,500.00 to \$750.00, insurance for \$2,000.00 to \$1,000.00 etc.

In the event of death, therefore, during the insured's 66th year or later, the amount of the death benefit under these terms will be equal to one half of the original amount of insurance indicated in the certificate.

#### Paid-up Life Insurance at 65

After the face amount of the certificate is automatically reduced in half, the reduced sum shall represent the "Paid-up Life Insurance."

(Page 36)

#### Double Indemnity in Event of Death by Accidental Means

The supplementary agreement for Double Indemnity can be attached to any of the regular forms of adult certificates in consideration of the payment of the additional double indemnity premium. Under the terms of this rider, it is agreed that an additional amount equal to the sum insured for under the certificate will be paid in the event of

death by accidental means of the insured, as defined in the said special provision granting the double indemnity benefit.

### When Double Indemnity Is Paid

Such additional sum, raising the total payment to double face of certificate, payable in the event of death by accidental means of the insured, shall be due only if, with the proofs of death required by said certificate, the Alliance shall receive due proofs:—

1.) That such death occurred while said certificate was in force, under its original terms, and there was no default in the payment of any premium thereunder.

2.) That the accident which caused such death occurred before the sixtieth (60) anniversary of the birth of the insured;

[fol. 399] 3.) That such death occurred within ninety (90) days after the date of such accident; and

4.) That such death resulted, directly, independently, and exclusively of all other causes, except as hereinafter provided, from bodily injury effected solely through external, violent and accidental causes, and that there was evidence of such death by accidental means by a visible contusion or wound on the exterior of the body (except in case of drowning or of internal injuries revealed by an autopsy):

Part Three—beginning at page 47 to and including page 98 of the manual contains Premium Tables for the various types of insurance available, together with the Tables of Values of the various certificates. Such Tables are not to be included in the Appendix.

(Page 100)

### PART FOUR

#### Juvenile Insurance

#### General Information

#### Eight Plans of Juvenile Insurance

The Alliance issues eight (8) forms of certificates for Juvenile, that is, for children less than 16 years of age, as follows:—

- 1.) Table 1—Term Insurance to Age of 18, with credit granted in transfer to the Adult Department. Any child may be insured under this plan from the date of birth and during any of the succeeding years until the age of 15, inclusively.
- 2.) Table 2—Endowment Insurance to Age of 18. Any child may be insured under this plan from the date of birth and during any of the succeeding years until the age of 10, inclusively.

Note:—Children over 10 years old are not eligible for insurance under the plan of Table 2.

- [fol. 400] 3.) Table 3—Ordinary Life, payable as long as the insured survives.
- 4.) Table 4—Term Insurance to Age of 16.
  - 5.) Table 5—20-Year Payment Life.
  - 6.) Table 6M—Special Ordinary Life, payable as long as the insured survives.
  - 7.) Table 7M—Special 20-year Payment Life.
  - 8.) Table 8—20 Year Endowment Insurance. This form of insurance provides for payment of death benefits in accordance with the scale of benefits. Upon maturity, however, of said certificate, that is, after said certificate has been in force 20 years, the full amount of the insurance shall be paid in cash.

(page 102)

### Who May Belong

Any child of Polish descent may be insured in the Juvenile Department of the Alliance, regardless of whether or not the parents or guardians, who insure the life of the child, belong to the Alliance.

(page 104)

### PART FIVE

#### Table 1

Modified Term Insurance to Age 18 with Credit Granted on Transfer to the Adult Department

Under this plan of insurance, a child may be insured up to \$250.00 on one (1) certificate, or on two, three or four

certificates, each with a maximum benefit of \$250.00, or a total maximum death benefit of \$1,000.00. Under this form of certificate, death benefits are payable according to the age in which death occurs.

[fol. 401]

## Age Limitation

Any child in good health may be insured according to Table 1, from date of birth and during any of the succeeding years until the age of 15 years and six (6) months.

(page 108)

## TABLE 4

Juvenile Term Insurance to Age 16 for \$500.00 or \$1,000.00

Any child in good health from the date of birth and during any of the succeeding years up to the age of 16 next birthday, may be insured under the plan of Table 4—Juvenile Term Insurance to Age 16.

(page 111)

## TABLE 2

## Endowment at Age 18

Notice: The new certificates under Table 2, effective since January 1, 1940, are issued in place of the old certificates for \$100.00, \$200.00, \$500.00 and \$1,000.00, which have been issued up to December 31, 1939. The principal difference between the old certificates under Table 2 issued to December 31, 1939, and the new certificates issued January 1, 1940, is the greater amount of death benefits available in the event of death of the child, insured under the new certificate after the date of birth up to the age of 10. The rates, however, under the new certificates are a trifle higher in comparison with the premium rates under the old certificates.

The old certificates under the plan of Table 2 and for the face amount of \$100.00 and \$1,000.00 are not issued. However, these certificates for the face amount of \$200.00



and \$500.00 will continue to be issued in the state of Virginia and in those states, where the scale of death benefit payments is similar to that of Virginia.

[fol. 402]

### Age Limit

Any child of Polish descent may be insured under this form of insurance providing it is not older than 10 years and six (6) months and is in good health. If payments are made regularly, such a certificate will be kept in full force and effect until the insured reaches the age of 18, at which time the full amount of insurance shall be paid in cash:

(Page 128)

### TABLE 8

#### Juvenile 20-Year Endowment

Insurance under the form of Table 8 is an endowment insurance and is available to any child in good health from the date of birth up to the age of 15 years and six (6) months.

#### Amount of Insurance

In those states, where the laws permit, the amounts of insurance available from the date of birth are: \$250.00, \$500.00 and \$1,000.00.

Part Six—beginning at page 133 to and including page 159 of the Manual, contains Premium Tables for the various types of Juvenile Insurance available, together with the Tables of Values of the various certificates. Such Tables are not to be included in the Appendix.

Part Seven—contains certain supplementary agreement provisions and tables of premiums of "Payor Benefits." Such supplementary agreements are not to be included in the Appendix.

[fols. 403-415] BOARD'S EXHIBIT No. 11

Board's Exhibit 11 is a specimen "Ordinary Life Certificate—Participating" issued by the Polish National Alli-

ance of the United States of North America, a fraternal benefit Society with its provisions expressed in English and in Polish. The certificate provides that the Polish National Alliance promises to pay to the beneficiary the sum called for. It is signed by printed signature of "I Karol Rozmarek, President of P. N. A. Attested Albin S. Szczerbowski, General Secretary P. N. A." and bears the Corporate Seal of the Alliance. The conditions provide for payment of premiums, change of beneficiary, settlement options, automatic extended insurance, and paid-up insurance, and provides for Premium Loans, Cash Loans and Cash Surrender Value. It has a Table of Non-Forfeiture Values. The Terms and provisions of the Certificate will not be otherwise shown in the Appendix than by the foregoing statement.

[fol. 416]

## BOARD'S EXHIBIT No. 17

## Organization Department

Semi-  
Monthly  
Salary

	Head of organization repartment and field worker	
J. Fafara	clerk and	117.50
J. Cieslak	correspondent	75.00
W. Trawinski	clerk and	
C. Szubko	correspondent	72.50
S. Welna	typist	35.00
E. Wojcik	"	40.00
J. Kowalska	"	40.00
H. Krzywiec	"	35.00
J. Zajac	clerk	45.00
	clerk	67.50

[fol. 417]

## BOARD'S EXHIBIT No. 18

Translation of Letter Mailed to Lodges and Councils,  
October 24, 1941

## P.N.A. Board of Director's Explanation

At the plenary meeting of the Board of Directors of the P.N.A. held in the Alliance Home in Chicago, on Oc-

tober 23rd, 1941, it was unanimously resolved to send to Council and Lodges of P.N.A. the following explanation:

Inasmuch as information has reached us, that certain employees of the offices of the P.N.A., who voluntarily abandoned work two weeks ago, sent out to the Respected Lodges and Councils of P.N.A. a communication not in accord with the actual condition of affairs, therefore we consider it our duty to present fairly and impartially the following facts:

1. We affirm once more, that no strike was had or exists in the P.N.A. offices and that our offices are functioning properly.

2. We affirm, that of the 131 workers employed in the offices of P.N.A. only 25 do not report for work, officially not informing the officers of the Board of Directors why they are doing so.

3. In the communications distributed and sent out to the press, councils and lodges, these employees claim that they organized a union because of the demand upon them of five per cent (5%) for a campaign fund, which absolutely does not conform with the truth inasmuch as minutes No. 41 of the Board of Directors plenary meeting held on 17, 18, 19 of April 1941, clearly state on page 4 in the President's report as follows:

"Shortly after assuming my office as president of the P.N.A. I observed that very frequently at our offices sales of tickets for various purposes and individual society affairs take place. I was under the impression that this was of passing duration and consequently took no steps in the matter. Finally I came to the conclusion that this was a chronic condition, which I deemed unhealthy and for this reason, I recommended to the present [fol. 418] plenary meeting of the Board of Directors to pass a resolution forbidding from today on the sale among the employees of all sorts of tickets, and the solicitation of any sort of contributions. The only collections permitted in our offices would be the monthly dues for belonging to the P.N.A. Fellowship Club. (These dues amount to 10 cents a month)."

The recommendation of the president was transformed into a motion and adopted unanimously. The contention

of these employees that they did not come to work because there was sought to be collected from them some form of payment is not in accord with the truth, because the motion of the Board of Directors passed 6 months ago is definite in this respect.

4. The assertion that those employees "went on strike" in defense—as they say—of dignity, by reason of alleged dismissals of employees without cause, likewise is not in accord with the truth. The employee discharged from work, of whom mention is made in the communications was dismissed by reason of her lack of application in the performance of her duties and frequent absence from the office without furnishing a reason therefor, which fact no employer can tolerate.

5. The charge, as if revenge was had upon those who belong to the union by transferring them from a better employment to worse absolutely is not in accord with the truth.

6. The Board of Directors does not prohibit any of its employees to belong to a union, however, it cannot permit that an insignificant minority of employees shall dictate to a prepondering majority of P.N.A. employees, to belong contrary to their will, to a union and to such a one as they shall order them to. The Board of Directors likewise cannot allow persons who have nothing in common with P.N.A. or Polish traditions to decide who and for what work a person shall qualify for in the offices of P.N.A.

7. The charge, that old and competent office employees were dismissed and in their places favourites and relatives of officers were engaged, is likewise not in accordance with the truth, because the present Board of Directors [fol. 419] not only retained practically all the old employees despite the fact that many were sponsored by former officers but likewise at the close of last year, on President Rozmarek's suggestion, increased the pay of all, in accordance with their ability, diligence and years of service.

8. We wish to emphasize, that the employees presently complaining in the councils and lodges never turned to the individual officers or to the Board of Directors with their

grievances or demands as they should have done in the first instance before they sought the protection of strangers, and whom later they sent in their name to the Board of Directors with unfounded demands.

9. We are constrained to emphasize the fact that, these good—as they claim—Alliance members, who quit work allegedly in the defense of their honor and in defense against the so-called terrorism, themselves not only lower the prestige and dignity of the P.N.A. but humiliate its good name and injure its interests through sending out untrue and insulting communications to the press, lodges and councils and place very often pickets of strangers in front of the P.N.A. offices, with signs degrading the P.N.A.

10. Fairness impels us to state, that among those who are not returning to work, at least half are good workers, however misguided or terrorised by ambitious individuals, who in this way seek to exert revenge on the present officers, because they were defeated at the last Convention. It is proper to mention that the leader of dissatisfied employees was one of the candidates at the last convention for the office of Secretary General of the P.N.A.

In submitting the foregoing information, we ask the respective Brothers and dear Sisters of the Alliance to take this explanation under their just and impartial consideration, and as to your opinion—we are entirely at ease.

Fraternally yours, Karol Rozmarek, Pres., P.N.A.;  
P. Kozłowski, Vice Pres., P.N.A.; Maria L. Czyz,  
Vice Pres., P.N.A.; A. S. Szezerbowski, Sec. Gen.,  
P.N.A.; M. Tomaszkievicz, Treas., P.N.A.

[fol. 420]

BOARD'S EXHIBIT No. 19

### ZGODA

Official organ of the Polish National Alliance of the U. S. of N. A. Membership nearly 300,000. The most extensively circulated Polish newspaper in America. 1406-1408 West Division Street, Wicker Park Station, Chicago, Illinois.

A-B-C Member Audit Bureau of Circulations

Entered as second class matter March 7, 1913, at the Post Office at Chicago, Illinois, under the Act of August



24, 1912. Acceptance for mailing at special rate of postage provided for in section 1105, Act of October 3, 1917, authorized on June 18, 1918.

BOARD'S EXHIBIT No. 20

TRANSLATION OF ARTICLE APPEARING IN  
WEEKLY ZGODA DECEMBER 14, 1941

The Board of Directors of the Polish National Alliance to the brothers and sisters of the Alliance.

In view of the fact that certain individuals are still representing the matter of misunderstanding with some office employees of the P.N.A., in a false light, the Board of Directors deems it advisable to present this matter to the Brothers and Sisters of the Alliance in its proper light.

1. On the 7th day of October, 1941, we had on our list 134 employees. On this day, without previous notice, some 30 odd employees did not report for work, a part of whom started to picket to the entrance to the Alliance building, attempting to prevent those employees who came to attend to their daily duties from entering the office. The purpose of this action was to force the Board of Directors to sign a contract with the American Federation of Labor for a "closed shop." Some days thereafter thirty of these employees, upon reflection, returned to their work, so that at the present time 107 employees are at work.

[fol. 421] 2. The Board of Directors does not prohibit any of its employees to belong to a union, but it cannot permit a small minority of employees to dictate to a predominant majority of such employees against their own will to join the union to which they are ordered. The Board of Directors likewise cannot permit that persons who had nothing in common with the P.N.A. and the Polish traditions to decide who is qualified for work in the offices of the P.N.A.

3. That the employees who quit their work, were neither concerned with improvement of working conditions, nor compensation, is evidenced by the fact, that they themselves in the handbills distributed by them set forth that they have no other claims against the P.N.A., excepting only the establishment of a "closed shop" in the offices of the

P.N.A. We know and understand that unions are necessary and beneficial in factories, mines and other private enterprises organized for profit, but we do not see the necessity of establishing a union in the office of a fraternal benefit society, which is organized for the mutual benefit of all, and in which all members, men and women, as well as the employees of the offices of the P.N.A., are co-owners of the assets of which we possess. Furthermore, the Board of Directors is of the opinion that the question of an eventual unionization of the offices of the P.N.A. is a matter for the convention to pass upon as the Supreme Governing body of our Society.

. . . . .

Finally we desire to state that up to now no fraternal benefit society, whether American or Polish, has established a "closed shop" in their offices, and that on the average the employees in the offices of the P.N.A. received better wages than is the case with other like societies, which fact can be readily verified. In our opinion our society is not subject to the Wagner Act and the consideration of this matter by the National Labor Relations Board.

We, therefore, cannot permit unions to force upon us office help as was demanded of us under the contract submitted for our signature, because the Board of Directors could not assume responsibility before the Convention and [fols. 422-425] the whole membership of the Alliance of the proper conduct of the office and business of the Polish National Alliance.

With this in mind the Board of Directors at its last plenary meeting unanimously adopted a resolution, that the groundless demands of some mislead employees for establishment of a "closed shop" in the offices of the P.N.A. be not considered, especially in view of the fact that the great majority of the office employees are not in agreement with those who quit their work.

Fraternally yours, For the Board of Directors of  
P.N.A., I. K. Kozmarek, President; A. S. Szczepowski, Gen. Secretary; M. Tomaszewicz, Treasurer.

## BOARD'S EXHIBIT No. 21

## DZIENNIK ZWIAZKOWY

Polish Daily Zgoda

The only Polish A.B.C. Daily in Chicago. Member of the United Press.

. . . . .

[fol. 426]

## BOARD'S EXHIBIT No. 25

(Letterhead of)

## OFFICE EMPLOYEES' UNION NO. 20732

Affiliated with The American-Illinois-Chicago  
Federations of Labor  
20th Floor, Chicago  
666 Lake Shore Drive  
Phone: Superior 5300

August 30th, 1941.

Mr. F. X. Swietlik, Censor, Polish National Alliance, 735  
North Walker Street, Milwaukee, Wisconsin.

MY DEAR SIR:

The organization of the Office Employees Union A. F. of L. represents the great majority of employees in the offices of the Polish National Alliance in Chicago and for some time we have been endeavoring to persuade the officers thereof to negotiate a contract bearing on a mutual understanding between them and the employees. We have been unable to arrive at any understanding through such peaceful persuasion and our only alternative in view of the circumstances is to exercise our economic strength which is a strike.

We are appreciative of the fact that such a condition should be avoided if at all possible and to that end we have prevailed upon the employees.

In the meantime, in meeting with the employees, whom we understand are also members of the Polish National Alliance, it was suggested that the matter be discussed with you and therefore with this thought in mind we are writing you asking that you meet with a committee of the employees and representatives of this union.

Anticipating your acquiescence, it would be appreciated if you would meet this committee either Saturday or Sun- [fol. 427] day September 6th or 7th in Milwaukee at any hour and place most convenient to you. Your early reply setting forth time and place shall likewise be appreciated.

Respectfully yours, D. E. O'Connell, President Office  
Employees Union Local 20732 A. F. L.

---

**BOARD'S EXHIBIT No. 26**

(Letterhead of)

**POLISH NATIONAL ALLIANCE OF THE UNITED  
STATES OF NORTH AMERICA**

**The Largest Fraternal Society of Americans of Polish  
Descent**

Office of the General Secretary of the P. N. A.  
1514-1520 W. Division Street  
Telephone Armitage 0700  
Chicago

September 4th, 1941

Mr. D. E. O'Connell, President, Office Employees Union  
Local 20732 A. F. L., 666 Lake Shore Drive, Chicago,  
Illinois.

DEAR SIR:

Acknowledgment is hereby made of the receipt of your correspondence of August 30th, 1941. Although I appreciate the confidence disclosed in directing this correspondence at my hands, cognizant as I am of the sentiment of the organization on the matter presented in your correspondence, I doubt if my position could be any different than that of the Board of Directors who, under the by-laws of the Society, are charged with the administration of the affairs of our association.

The writer feels that the Polish National Alliance being national in scope, conducted for the welfare of its entire [fols. 428-439] membership must be differentiated from a corporation conducted for profit. I am convinced on the basis of my long association with and thorough knowledge of the affairs of this organization that the employees have

heretofore been accorded every possible consideration and the relationship heretofore subsisting has been characterized by the same fraternal spirit which actuates the entire membership.

In view of the foregoing the writer is unable to perceive any benefit to be gained from a conference suggested in your communication.

Very truly yours, F. X. Swietlik.

CEM:KW.

[fol. 440]

BOARD'S EXHIBIT No. 33

(Translation of Letter to the Censor, Dated March 29, 1941).

Mr. F. X. Swietlik, Censor P. N. A., 735 N. Water St., Milwaukee, Wis.

ESTEEMED CENSOR:

After organizing the Union of the employees of the offices of the Alliance and affiliating ourselves with the American Federation of Labor, we deem it proper to inform You Mr. Censor, as the Supreme officer, and at the same time in epitome inform You what has forced us to take so drastic a step.

In organizing a Union, we were not concerned solely with the protection of our employment. Knowing the position of the organization, we tolerated various collections and continual sale of tickets. However, when in the last few days the assistants to the General Secretary issued strict orders to return regularly 5% of our modest for the present day earnings, we could not fail to protest. This order affected of all the employees with the exception of those in the Treasurer's Department.

Protesting—we had no other alternative. Our questions calling for what purpose we are to contribute this money brought a reply "It should not govern You, and if you don't like it there are plenty of applications in the office of the General Secretary."

We could not accept without a protest such a treatment of this matter. Since although we are employed in the Offices of the Polish National Alliance we deem ourselves free people. Furthermore, it does not concern us alone.



These conditions will not be tolerated by the brothers of the Alliance, likewise the drives for membership will be seriously affected.

Therefore to uphold the prestige of the organization we deemed the time arrived to remonstrate.

[fol. 441] Organizing the Union, we assure You Mr. Censor and all the Officers of the Board of Directors, that as in the past, we shall be generous when it concerns causes of a National or humanitarian character, that we will work for the organization always to the best of our abilities placing the interests of the organization in the first place. Doing this we in return want to be treated as people who cherish their honor, and as members of the same Fraternal Organization.

Submitting to Your Mr. Censor, our matter we are convinced, that You Mr. Censor will understand our position and justify our action.

With assurances of esteem and regard

W. J. Andrzejewski

Jozef Gajda

Edwin Orlowski

Jan Gembara

Stanislaw Oleksky

Edward Oleszek

W. Kargol

I. G. Niemiec

S. Gajkowski

Jan Wojcik

L. Rozen

Jan Wojciechowski

Helena Lachajczyk

Leon Zarembski

J. Swieszek

St. Kilar

Aleks. Bartold

S. Spila

E. Piekarczyk

J. Zurek

T. Jasiorkowski

J. Mazur

R. Sechman

Z. Szaflarska

H. Krzywiec

J. Zajac

F. Ziemska

E. Dzijsa

Z. Satkiewicz

G. Hodupska

V. Zajackowska

J. Balla

E. Florkiewicz

W. Walacha

S. Andrzejewska

E. Panek

W. Cichowicz

S. Gadecki

A. Dziuba

J. Popatowski

T. Jadach

I. Pawlowski

A. Gonerka

L. Barnas

W. Siepak

[fol. 442]

## BOARD'S EXHIBIT No. 34

(Copy of Letter from the Censor—F. X. Swietlik dated May 14, 1941.)

Mr. W. J. Andrzejewski, Chairman of the P. N. A. Office Employees Union, 4900 W. Hutchinson St., Chicago, Illinois.

DEAR SIR:

Confirming the receipt of your declaration, I must assert that I am not in accord with the manner of proceeding in the matter inasmuch as your grievances should have been presented to the administrative authorities of our organization, and be adjusted solely by organizational media.

When this matter reached my attention, I had a conference in the matter with the members of the Board of Directors which at their plenary meeting adopted a resolution in protection of the employees of the offices.

In our Fraternal Organization, a fraternal relationship should subsist between the employees and the superior authority, and a desire to adjust all differences no where else, but within the organizational media.

On the list transmitted at my hand I find several names of persons, who virtually owe their positions in the Alliance exactly to this concept of fraternalism, which should prevail in our organization, and not exclusively to their qualifications.

Accepting advices of your declaration, I trust that the forementioned resolution of the Board of Directors was the proper adjustment of the issue in question.

Fraternally yours, F. X. Swietlik, Censor of the Polish National Alliance.

[fol. 443]

## BOARD'S EXHIBIT No. 35

(Caption—Case No. XIII-C-1692)

### Stipulation

It is hereby stipulated and agreed by and between the undersigned parties to the above-entitled proceeding that the following facts may be received in evidence in the above-entitled proceeding with the same, but no greater,

force and effect as though adduced by competent testimony and documentary evidence and without prejudice to the rights of any of the parties hereto to offer other or further evidence relating to the same matters:

Polish National Alliance of the United States of North America, herein called the Alliance, is a fraternal benefit society incorporated under the laws of the State of Illinois. The Alliance has its main office in Chicago, Illinois. The Alliance is the leading Polish-American society in the country, having lodges in all sections of the United States possessing significant numbers of persons of Polish extraction.

The Alliance provides death, disability and accident benefits to its members and their beneficiaries. The Alliance is licensed to conduct its business in twenty-six states of the United States, in the District of Columbia, and in Manitoba, Canada. The Alliance has 1817 local lodges which are located as follows:

State or Place	No. of Lodges	State or Place	No. of Lodges
Arkansas	2	Missouri	16
California	5	Nebraska	5
Colorado	4	New Hampshire	6
Connecticut	60	New Jersey	78
Delaware	3	New York	236
District of Columbia	1	Ohio	116
Florida	1	Oregon	1
Illinois	419	Pennsylvania	407
Indiana	40	Rhode Island	10
Kansas	4	Texas	7
Maryland	21	Virginia	1
Massachusetts	80	Washington	8
Michigan	173	West Virginia	14
Minnesota	25	Wisconsin	73
		Manitoba, Canada	1

[fol. 444] The activities of the Alliance are managed and directed by its directors and officials located at its home office in Chicago, Illinois. The terms and conditions of the various benefit certificates offered by the Alliance are determined and all investments of the funds of the Alliance are made by such officials at the home office. All applications for certificates and claims, applications for loans, and

other matters pertaining to certificates in force are acted upon at the home office. All certificates and all checks covering disbursements by the Alliance are executed at the home office in Chicago, Illinois.

On December 31, 1941, the Alliance had 272,897 certificates in force with a total face amount of \$159,683,583.00.

As of December 31, 1941, the assets of the Alliance were in part as follows:

Cash	\$1,059,236.00
United States Government Bonds and bonds secured by the United States Government	2,451,056.25
Bonds of United States political subdivisions	6,141,863.62
Railroad and railroad equipment bonds	1,694,491.08
Public Utility Bonds	1,007,461.83
Industrial Bonds	1,749,275.41
Stocks	29,750.00

Notes secured by mortgage loans on real estate:

Illinois	\$2,420,843.40
Indiana	321,159.97
Michigan	2,000.00
Wisconsin	2,308.10

Real Estate Owned:

Illinois	\$9,223,443.34
Indiana	1,586,557.73
Michigan	14,829.48
New York	25,193.12
Wisconsin	7,954.14

The cash of the Alliance was during 1941 deposited in banks located in Illinois and Indiana.

[fol. 445] All securities purchased by the Alliance are delivered to it in Chicago and, with the exception of small amounts on deposit with the authorities of Manitoba, Canada, are kept at the home office. Securities are purchased by the Alliance from licensed dealers in securities.

The present officers of the Alliance, as provided for in the constitution, are:

I. K. Rozmarek, president; P. Kozlowski, vice-president; M. L. Czyz, vice-president; A. S. Szczerbowski, general secretary; M. Tomaszkiwicz, treasurer.

The directors of the Alliance are the above officers and the following persons:

J. Wattras, Dr. M. W. Majchrówicz, J. Rekucki, A. Wojcik, I. Zwarycz, J. Migala, S. E. Basinski, I. J. Postanowicz, G. Piwowarczyk, J. K. Gronczewski.

Alliance Printers and Publishers, Inc., herein called the Alliance Printers, is an Illinois corporation with its principal place of business and main office located in Chicago, Illinois. The Alliance Printers has a capital stock of Five Thousand Dollars, which is divided into fifty shares of One Hundred Dollars each. The Alliance Printers is engaged in the business of printing the official organ of the Polish National Alliance, publishing a daily newspaper, and doing job printing.

All of the capital stock of the Alliance Printers is held by the Board of Directors of the Alliance. Each of the 15 members of the Board of Directors of the Alliance holds 3 shares of capital stock of the Alliance Printers, while the President of the Alliance holds an additional 5 shares. Upon his election as a Director of the Alliance, there is transferred to the Director the said shares of stock of the Alliance Printers, and upon the death, resignation, or failure of re-election of the Director, the stock in the Alliance Printers is transferred to his successor who holds it during his term of office.

The officers of the Alliance Printers are:

I. K. Rozmarek, president; A. S. Szerbowski, secretary; M. Tomasziewicz, treasurer.

[fol. 446] The Board of Directors of the Alliance Printers is composed of the following persons:

I. K. Rozmarek	P. Kozlowski
A. S. Szerbowski	M. L. Czyz
M. Tomasziewicz	J. Migala
G. Piwowarczyk	

The weekly newspaper printed by the Alliance Printers is called the weekly Zgoda. It is the official organ of the Alliance and is mailed to every member of the Alliance, the cost of such member's subscription being included in his monthly payments. During 1941 there were published a total of 6,857,556 copies of the Zgoda, about 80 per cent of which were sent to subscribers outside the State of Illi-



nois. The Zgoda is distributed both within and without the State of Illinois by means of the United States Mails.

The daily newspaper published by the Alliance Printers is called the Polish Daily Zgoda (Dziennik Zwiazkowy). During 1941, there were published a total of 7,785,524 copies of the Polish Daily Zgoda, about 15 per cent of which were sent to subscribers outside the State of Illinois. The Polish Daily Zgoda is distributed both within and without the State of Illinois by means of the United States Mail.

During the year 1941 the Alliance Printers purchased paper in the amount of \$59,474.41 for use in printing the weekly Zgoda and the Polish Daily Zgoda. All of this paper originally came from points outside the State of Illinois.

During 1941 the Alliance spent \$19,125.95 for postage, telephone, telegram, and express service; and \$15,614.09 for travelling expenses of its officials.

Polish National Alliance of the United States of North America, by Casimir E. Midowicz, Ewart Harris, Attys; Lester Asher, Attorney, 13th Region, National Labor Relations Board.

March 25, 1942.

[fol. 447]

## BOARD'S EXHIBIT No. 36

## Polish National Alliance

Statement Showing Number of Certificates and Amount  
of Insurance in Force as of December 31, 1941

	Number of Certificates	Amt. of Ins. in Force
Arkansas	121	\$87,572.00
California	377	216,175.00
Colorado	532	408,177.00
Connecticut	10,300	5,871,051.00
District of Columbia	108	63,050.00
Delaware	508	264,807.00
Florida	32	18,622.00
Illinois	64,774	36,700,464.00
Indiana	7,526	4,412,888.00
Kansas	928	559,226.00
Missouri	2,407	1,372,570.00
Michigan	22,203	12,264,089.00
Maryland	3,918	2,115,611.00
Massachusetts	13,493	7,186,992.00
Minnesota	3,222	1,914,796.00
Maine	—	—
New York	33,093	18,726,414.00
New Jersey	14,185	8,562,952.00
New Hampshire	897	470,410.00
Nebraska	702	473,885.00
Ohio	16,560	9,805,513.00
Oregon	225	132,549.00
Pennsylvania	61,188	39,322,127.00
Rhode Island	2,162	1,222,439.00
Texas	739	444,195.00
Washington	923	583,481.00
West Virginia	2,170	1,384,411.00
Wisconsin	9,556	5,070,265.00
Virginia	40	24,444.00
Manitoba, Canada	8	4,408.00
	<u>272,897</u>	<u>\$159,683,583.00</u>

[fol. 448]

## BOARD'S EXHIBIT No. 37

## Polish National Alliance

## Traveling Expenses out of Illinois

From January 1st, 1941 to December 31, 1941

J. Fafara .....	\$1,895.80
R. Swiontek .....	103.96
W. Szczygiel .....	88.95
Other Organizers .....	619.48
<b>Total .....</b>	<b>\$2,708.19</b>

## BOARD'S EXHIBIT No. 38

## Polish National Alliance

Advertising, Printing and Stationery Expenses Outside of  
the State of Illinois—From Jan. 1, 1941 to Dec. 31, 1941

Advertising (Newspapers, Magazines, Radio and Other) .....	\$10,661.55
Printing .....	1,340.57
Stationery .....	—
<b>Total .....</b>	<b>\$12,002.12</b>

[fol. 449]

## RESPONDENT'S EXHIBIT No. 1

## State of Illinois

## Department of Trade and Commerce

## Division of Insurance

## Springfield, Illinois

May 20, 1929.

I, the undersigned, Director of Trade and Commerce of the State of Illinois, do hereby certify that the annexed instrument is a full, true and correct copy of Articles of

Association of the Polish National Alliance of the United States of North America Located at Chicago Illinois Approved March 30, 1896, now on file in and forming a part of the records of this department.

In Testimony Whereof, I hereto subscribe my name, and affix the Seal of my office, at Springfield, the day and year first above written.

Leo H. Lowe, Director of Trade and Commerce.  
(Seal.)

Attest: George Huskinson, Superintendent of Insurance.  
CD-88.

[fol. 450]

State of Illinois

Insurance Department

Bradford K. Durfee, Superintendent

To All To Whom These Presents Shall Come—Greeting:

Whereas, a Certificate of Association, duly signed and acknowledged, having been filed in the Insurance Department of the State of Illinois, on the 30 day of March A. D. 1896, for the organization of the Polish National Alliance of the United States of North America (Zwiazek Narodowy Polski W Stanach Zjednoczonych Polnocny Amerika) under and in accordance with the provisions of an act entitled "an act to provide for the organization and management of fraternal beneficiary societies for the purpose of furnishing life indemnity or pecuniary benefits to beneficiaries of deceased members or accident or permanent indemnity disability to members thereof; and to control such societies of this State and of other States doing business in this State, and providing and fixing the punishment for violation of the provisions thereof, and to repeal all laws now existing which conflict herewith," approved and in force June 22, 1893, as amended by act approved June 21, 1895, in force July 1, 1895, a copy of which certificate is hereto attached.

Now, Therefore, I, Bradford K. Durfee, Insurance Superintendent of the State of Illinois, by virtue of the powers vested in me and the duties imposed upon me by the act aforesaid, do hereby certify that the said Polish National Alliance of the United States of North America (Zwiazek Narodowy Polski W Stanach Zjednoczonych Polnocny

Amerika) is a legally organized Fraternal Beneficiary Society, under the laws of this State.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of my office, at Springfield, State of Illinois, this 30 day of March A. D. 1896.

Bradford K. Durfee, Insurance Agent. (Seal.)

[fol. 451] STATE OF ILLINOIS,  
County of Cook, ss:

To the Insurance Superintendent of the State of Illinois:

We, the undersigned, Edmond Z. Brodowski, Adam Blaszczyński, Ignatius F. Dankowski, A. X. Centella, Bernard L. Maciejewski, F. H. Jablonski, Stanislaw Nicki, Wladislaw Wisniewski, John Rosinski and Joseph Palczynski, citizens and voters of the State of Illinois, hereby associate ourselves together for the purpose of forming a corporation, under an act of the General Assembly of the State of Illinois, entitled "An act to provide for the organization and management of fraternal beneficiary societies for the purpose of furnishing life indemnity or pecuniary benefits to beneficiaries of deceased members, or accident or permanent indemnity disability to members thereof, and to control such societies of this State and of other states doing business in this State, and providing and fixing the punishment for violation of the provisions thereof, and to repeal all laws now existing which conflict herewith," approved and in force June 22, 1893, as amended by act approved June 21, 1895, in force July 1, 1895, and for the purpose of such organization we hereby certify as follows, to-wit:

1. The name or title by which such corporation shall be known in law is The Polish National Alliance of the United States of North America (Związek Narodowy Polski W Stanach Zjednoczonych Polnocny Ameriky).
2. The principal business office shall be located in Chicago, County of Cook, State of Illinois.
3. The names and residences of the incorporators are as follows, respectively, to-wit:



Names	Residence		
	Town	County	State
Edmond Z. Brodowski	Chicago	Cook	Illinois
Adam Blaszczyński	Chicago	Cook	Illinois
Ignatius F. Dankowski	Chicago	Cook	Illinois
A. X. Centella	Chicago	Cook	Illinois

[fol. 452]

Bernard L. Maciejewski	Chicago	Cook	Illinois
F. H. Jablonski	Chicago	Cook	Illinois
Stanisław Nicki	Chicago	Cook	Illinois
Władisław Wisniewski	Chicago	Cook	Illinois
John Rosinski	Chicago	Cook	Illinois
Joseph Palczynski	Chicago	Cook	Illinois

4. The object for which this corporation is formed is (1) To unite in a fraternal beneficiary society such members as are admissible in accordance with the laws of the Polish National Alliance, and to advance its members morally, socially and intellectually and to develop patriotism among the members thereof. (2) To create and maintain in a fund or funds by levying on and collecting from the members fees, dues and assessments for carrying out the purposes of the Alliance, and after paying the expenses of conducting its affairs, to pay therefrom, to members who shall have complied with the legal requirements of the Alliance, such sick, accident and disability relief, and to families, kinsmen, heirs, blood relations, affianced husband or affianced wife and to all persons dependent upon the member, such death and funeral benefits as are provided by the rules and constitution of the Alliance.

5. The plan which shall be followed in carrying out the object is as follows, to-wit: To unite in a grand fraternal beneficiary, educational and patriotic society, all men of Polish descent or affiliation, by an equitable assessment to provide: (1) For the payment of death and sick benefits, (2) Disability relief in case of accident, (3) To promote through the group or lodge system with ritualistic form of work, the social, moral, educational and patriotic advancement of the members of the Alliance.

The Supreme power of the Polish National Alliance is to be vested in a central government, to be composed of Ten (10) men who are to be elected by the representatives of

the members of the respective groups thereof, at the biennial session of the Alliance; said session is the supreme legislative power of the Alliance.

6. The management of the aforesaid Alliance shall be vested in a Board of Ten directors.

[fol. 453] 7. The following persons are hereby selected as the Directors to control and manage said corporation for the first year, viz: Theo. M. Helinski, Edmond B. Brodowski, Ignatius F. Dankowski, Bernard L. Maciejewski, A. X. Centella, Val W. C. Klinski, Adam Blaszczyński, Teo. Kodis, Stanislaw Nicki and M. J. Tadowski.

Their successors shall be selected in the following manner: By the representatives of the members of the respective groups thereof at the biennial session of the Alliance, which is the supreme legislative body of the Alliance.

8. No person shall become a member of this corporation who is under 21 or over 50 years of age.

9. Applicants for membership will be required to undergo a strict medical examination before being admitted to membership in this corporation.

10. Bona fide applications for membership have been secured from not less than five hundred persons who have each made application for membership in said proposed Association or Society, and have each been duly examined and recommended by a reputable physician, and have each deposited with the undersigned proposed incorporators of said Association or Society the sum of one assessment on each one thousand dollars of insurance or part thereof, provided for in the plan of organization of said Association or Society as an advance assessment for mortuary purposes.

Signed: Edmond Z. Brodowski, Adam Blaszczyński, Ignatius F. Dankowski, A. X. Centella, Bernard L. Maciejewski, F. H. Jablonski, Stanislaw Nicki, Wladislaw Wisniewski, John Rosinski, Joseph Palczynski.

STATE OF ILLINOIS,

County of Cook, ss:

I, C. F. Pettkoske, a Notary Public, in and for the County and State aforesaid, do hereby certify that on this 28th.

day of March, A. D. 1896, personally appeared before me [fol. 454] Edmond Z. Brodowski, Adam Blaszczyński, Ignatius F. Dankowski, A. X. Centella, Bernard L. Maciejewski, F. H. Jablonski, Stanislaw Nicki, Wladislaw Wisniewski, John Rosinski and Joseph Palczynski, to me personally known to be the same persons who executed the foregoing certificate, and severally acknowledged that they had executed the same for the purposes therein set forth.

In Witness Whereof, I have hereto set my hand and seal the day and year above written.

C. F. Pettkoske, Notary Public. (Seal.)

## RESPONDENT'S EXHIBIT No. 2

### State of Illinois

#### Department of Insurance

#### (Emblem)

I, the undersigned, Director of Insurance of the State of Illinois, do hereby certify that the annexed instruments are full, true and correct photostatic copies of Amendments to the Articles of Incorporation of the Polish National Alliance of the United States of North America, a fraternal benefit society, located at Chicago, Illinois, adopted September 16, 1939, together with Certificate of Approval thereof by Ernest Palmer, Director of Insurance under date of October 17, 1939, now on file in and forming a part of the records of this Department.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Seal of my office.

Done at the City of Springfield, this 6th day of June, A. D. 1941.

Paul F. Jones, Director of Insurance. (Seal.)

### State of Illinois

#### Department of Insurance

I, the undersigned, Director of Insurance of the State of Illinois, do hereby certify that I have examined the Amendment [fol. 455] to Articles One (1), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven

(11) and Twelve (12) of the Articles of Incorporation of Polish National Alliance of the United States of North America, a fraternal benefit society, located at Chicago, Illinois, adopted September 16, 1939, and find the same are conformable to an Act of the General Assembly of the State of Illinois, entitled.

**"Illinois Insurance Code"**

approved June 29, 1937, and effective July 1, 1937, and not inconsistent with the constitution or laws of this State or of the United States, and such Amendments are approved and filed this 17th day of October, 1939.

In Testimony Whereof, I hereto set my hand cause to be affixed the Seal of my office.

Done at the City of Springfield, this 17th day of October, 1939.

Ernest Palmer, Director of Insurance. (Seal.)

**CERTIFICATE OF CHANGES IN THE ARTICLES OF INCORPORATION**

Of the Polish National Alliance of the United States of North America

It is hereby certified that on the 16th day of September, A. D. 1939, at a regular meeting of the Convention of the Polish National Alliance of the United States of North America, a fraternal benefit society, organized and existing under and by virtue of the laws of the State of Illinois, held in the City of Detroit, Michigan, at which Convention a quorum was present the following among other proceedings were had:

Brother Frank Kosinski of Lodge No. 509, introduced the following resolution and moved its adoption:

*"Resolved* that the Articles of Incorporation of this Society be and the same are hereby amended and changed in form and substance as follows:

[fol. 456] Amend Article 1 by striking all of said Article and inserting in lieu thereof the following:

The name by which this Corporation shall be known in law is Polish National Alliance of the United States of North America hereinafter referred to as "Alliance".

Amend Article 4 by striking all of said Article and inserting in lieu thereof the following:

This Corporation is a fraternal benefit society without capital stock, under the laws of the State of Illinois and is organized and carried on for the sole benefit of its members and their beneficiaries and not for profit, having a lodge system with ritualistic form of work and representative form of government. The purpose of the Alliance shall be to promote the cultural, social and economic advancement of its members, to foster fraternalism and patriotism among them, to provide death, disability, accident and other benefits to its members and their beneficiaries, and to provide benefits on the lives of children as authorized by its Constitution and By-laws, and in accordance with the laws of the State of Illinois.

Amend Article 5 by striking all of said Article and inserting in lieu thereof the following:

Membership in the Alliance shall be subject to the requirements of the laws of the State of Illinois and the By-laws of the Alliance. The payment of benefits in all cases shall be subject to compliance by the members with the contract, rules and By-laws of the Alliance, and in conformity with the laws of the State of Illinois, now in force or hereafter enacted.

Amend Article 6 by striking all of said Article and inserting in lieu thereof the following:

The Alliance may create, maintain and disburse funds in accordance with its By-laws and the laws of the State of Illinois. The funds for the payment of benefits and expenses of the Alliance shall be derived from payments by the members, together with accretions to such funds as may be provided for in the By-laws of the Alliance.

[fol. 457] Amend Article 7 by striking the second part of said Article and inserting in lieu thereof the following:

The successors shall be selected as the By-laws of the Alliance may provide.



Amend Article 8 by striking all of said Article and inserting in lieu thereof the following:

The plan which shall be followed in carrying out the purposes of the Alliance is as follows, to-wit: by the organization of local lodges and a Convention as defined in its By-laws. The local lodge shall meet at least once a month, and the Convention shall meet at least once in four calendar years. The Convention shall be the supreme legislative and governing body of the Alliance, having jurisdiction over all subordinate lodges and other subordinate bodies as provided in its By-laws, and over officers and members of the Alliance. It shall be the judge of the election and qualification of its own members, and it shall possess the power to do and perform any and all acts and things by it deemed necessary and expedient for the welfare and perpetuity of the Alliance, and to carry out its purposes, all in conformity with the laws of the State of Illinois.

Amend Article 9 by striking all of said Article and inserting in lieu thereof the following:

The Alliance shall have the power to acquire, hold and convey such real and personal property as shall be requisite for the convenient accommodation of the transaction of its business, and such as may come into its possession by reason of its investments or in satisfaction of indebtedness. The Alliance may provide for the promotion of educational and fraternal activities among its members and for such purpose may create as a part of its General fund a Special fund, as its Convention may determine.

Change Article 10 to Article 12 and as Article 10 adopt the following:

The elective officers of the Alliance shall be a Censor, a Vice-Censor and Commissioners, as shall be provided [fol. 458] in the By-laws of the Alliance, who shall constitute the judicial, appellate and supervisory body in the Alliance, and a President, two Vice-Presidents, a General Secretary, a Treasurer, and a Board of Directors consisting of such number of persons as shall be provided for in the By-laws of the Alliance, and such other officers as the By-laws of the Alliance shall pro-

vide. They shall be elected by a majority vote at any regular session of the Convention, for such term as shall be fixed by the By-laws of the Alliance. In case of the death, resignation or removal of any of said officers the successor for the unexpired term shall be elected as provided in the By-laws of the Alliance. The By-laws may provide that the President, the two Vice-Presidents, the General Secretary and the Treasurer shall be ex-officio members of the Board of Directors.

Adopt Article 11 as follows:

The Board of Directors shall be the executive and managing body of the Alliance, shall protect the charter of the Alliance, shall exercise the corporate powers of the Alliance, as provided by the laws of the State of Illinois, shall have the control and custody of all securities and all real and personal property, which the Alliance shall possess or acquire, with power to designate a custodian to have charge of any real or personal property of the Alliance, and shall perform such other duties as may devolve upon it by the laws of the State of Illinois and the By-laws of the Alliance.

*Be it Further Resolved* that all amendments to the Articles of Incorporation of this Society enacted after the year 1896 and now in force are hereby repealed."

The said motion having been duly seconded, the roll of the Convention was called and resulted as follows:

For the resolution, 516.  
Against the resolution, none.  
Absent, 8.  
Not voting, 10.

Which being an affirmative vote of all members present and entitled to vote at such Convention, said resolution was [fol. 459] by the presiding officer thereupon declared to have been adopted.

It is further certified that said Convention was composed of the following:

Officers of the Society, 1.  
Directors of the Society, none.  
Elected delegates from the local lodges, 533.  
Total delegates in attendance, 534.

In Witness Whereof the said Convention of the Polish National Alliance of the United States of North America has caused this certificate to be executed by its General Secretary, and its corporate seal affixed hereto at Chicago, Illinois, this 4th day of October, A. D. 1939.

Polish National Alliance of the United States of North America. By A. S. Szczerbowski, General Secretary. (Seal.)

### RESPONDENT'S EXHIBIT No. 3

Illinois Insurance Code 1939, being Chapter 73 Revised Statutes of Illinois 1941

#### SECTION 282:

##### *Fraternal Benefit Society Defined*

Every corporation, society, order, lodge or voluntary association, without capital stock, formed, organized or carried on solely for the benefit of its members and their beneficiaries, and not for profit, having a lodge system with ritualistic form of work and a representative form of government and which makes provision for the payment of benefits in accordance with this article, is hereby declared to be a Fraternal Benefit Society. The word "Society" as used in this article shall mean all such fraternal benefit societies.

#### [fol. 460] SECTION 283:

##### *Lodge System Defined*

Every such society having a supreme governing or legislative body and subordinate lodges or branches, by whatever name known, into which members shall be elected, initiated and admitted in accordance with its constitution, by-laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the constitution or by-laws of such society to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the Lodge System.

## SECTION 284:

*Representative Form of a Government Defined*

Every such society shall be deemed to have a representative form of government when it shall provide, in its constitution or by-laws, for a supreme legislative or governing body composed of representatives elected either by the members or by delegates chosen directly or indirectly by the members, together with such other members as may be prescribed by its constitution or by-laws; the elective members, however, shall constitute a majority in number and have not less than two-thirds of the votes nor less than the votes required to amend its articles of incorporation, (or, if a voluntary association, its articles of association), constitution and by-laws.

## SECTION 285:

*Meetings*

The meetings of the supreme or governing body and the election of officers, representatives or delegates, shall be held as often as once in four calendar years.

## SECTION 288:

*Benefits*

Every such society authorized to do business in this state shall provide for the payment of death benefits, and may issue to its members term, life, endowment, and annuity [fol. 461] certificates and combinations thereof, and may provide for the payment of benefits in case of temporary or permanent partial disability resulting from sickness or accident and also for permanent total disability as the result of either disease or accident occurring before age sixty and may grant loans, withdrawal equities and such non-forfeiture options as its constitution or by-laws may permit; *provided* that such grants shall in no case exceed in value the portion of the reserve to the credit of the certificate on which the same are made. Any society authorized to do business in this State may make provisions for the payment of funeral benefits to the extent of such portion of any payment under the certificate as may reasonably appear to the society to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member; *provided* the funeral benefits shall not exceed the sum of two hundred dollars.

## SECTION 289:

*The Contract .*

Every society shall issue to each beneficial member a certificate specifying the amount of benefit provided thereby, and shall provide that the certificate together with any riders or endorsements (which must be attached thereto) the articles of incorporation (or, if a voluntary association, the articles of association), the constitution and by-laws of the society and the application for membership and declaration of insurability (if used in lieu of a medical examination) a copy of which application and declaration of insurability (if used in lieu of a medical examination), signed by the applicant, shall be endorsed upon or attached to the certificate and made a part thereof, with all amendments to each, thereof, shall constitute the entire contract between the society and the member; and copies of the same, certified by the Secretary or corresponding officer, shall be received in evidence as to the terms and conditions thereof. Any changes, additions or amendments to said articles of incorporation (or, if a voluntary association, articles of association), constitution or by-laws duly made or enacted subsequent to the issuance of the benefit certificate, [fol. 462] shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership; *provided, however*, that any society may provide in its certificates that the rates and benefits shall not be subject to change, in which event the certificate shall contain a provision that if the Society's reserves shall become impaired, in such event there shall be paid by the insured to the Society the amount of the insured's equitable proportion of such deficiency as ascertained by the Society's Board of directors, and if such payment be not made, same shall stand as an indebtedness against the certificate and draw interest at six per centum per annum.

## SECTION 294:

*Investment of Funds and Real Estate Holdings*

The investment of funds and real estate holdings of all domestic societies shall be in accordance with the pro-



visions of this Code governing investments and real estate holdings of life insurance companies; and not otherwise.

SECTION 296-(b):

*Formation of Fraternal Benefit Societies*

4b) The purpose for which it is formed, which shall not include more liberal powers than are granted by this Article, provided that any lawful, social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society, and the mode in which its corporate powers are to be exercised.

SECTION 298:

*Publications*

Every fraternal benefit society, organized under the laws of the State of Illinois, is hereby authorized and empowered to print and to publish such periodicals, books, [fol. 463] pamphlets and other printed matter as it shall deem of public interest or value and a copy thereof shall be sent to the Director; *provided*, that any moneys received therefor, over and above the cost of the same, shall be used for the benefit of said society and the membership.

SECTION 301:

*Legislative Bodies—Voting*

1. Every domestic society shall maintain its principal office in this State but may provide for the meeting of its legislative or governing body in any other state, province or territory wherein such society shall have not less than five subordinate lodges or branches and all business transacted at such meeting shall be valid in all respects as if such meeting were held within this State. When the laws of any such society provide for the election of its officers by votes to be cast in its subordinate bodies, the votes so cast shall be as valid as if cast at the meeting of its legislative or governing body.

2. In all meetings of any such society, no member, representative or delegate shall cast more than one vote on any question submitted therein, and the members, officers, representatives or delegates of such society shall not vote by proxy and no member under sixteen years of age shall have a voice in the management of the society.

## RESPONDENT'S EXHIBIT No. 4

Certificate Number 19736

STATE OF ILLINOIS

Office of the Secretary of State

To all to Whom these Presents Shall Come, Greeting:

I, Edward J. Hughes, Secretary of State of the State of Illinois do hereby certify that the following and hereto attached is a true photostatic copy of the Articles of Incorporation and all amendments thereto of Alliance Printers and Publishers Incorporated the original of which is now on file and a matter of record in this office.

[fol. 464] In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, Done at the City of Springfield this 18th day of November A. D. 1937.

Edward J. Hughes, Secretary of State. (Seal.)

(This Statement Must be Filed in Duplicate)

A 50994 Apr. 20 '33.

Paid Apr 24 1933 \$20.00

100 T \$1334 OAG.

STATE OF ILLINOIS,

Cook County, ss:

To Edward J. Hughes, Secretary of State:

We, the undersigned, adult citizens of the United States, at least one of whom is a citizen of Illinois,

Jan Romaszkievicz, 2314 Cortez Street, Chicago, Illinois.

Albin S. Szczerbokski, 2427 N. Central Ave., Chicago, Illinois.

Gregory Piowareczyk, 2237 West 51st Street, Chicago, Illinois.

proposed to form a corporation under an Act of the General Assembly of the State of Illinois, entitled, "An Act in relation to corporations for pecuniary profit," approved June 28, 1919, in force July 1, 1919; and all Acts amendatory thereof; and, for the purpose of such organization, we hereby state as follows, to-wit:

1. The name of such corporation is Corporation of Polish National Alliance of the United States of North America Publication.

2. The object for which it is formed is—

1. To print, publish and sell books, newspapers, journals, magazines, periodicals, lists, pamphlets and reports for the dissemination of current and general architectural, engineering, construction and building trade news, notices and information, throughout the business world.

[fol. 465] 2. To carry on the business as proprietors and publishers of newspapers, journals, magazines, books and other literary undertakings.

3. To carry on the business of stationers, printers, lithographers, stereotypers, electro-typers, photographic printers, photo-lithographers, engravers, die-sinkers, book printers, account book manufacturers, dealers in parchment, dealers in stamps, advertising agents, designers, draftsmen, ink manufacturers, book sellers, paper manufacturers and dealers in material used in the manufacture of paper, or any other business or manufacture that may seem expedient.

4. To establish competitions in respect of contributions or information suitable for insertion in any publication of the Company, or otherwise, for any of the purposes of the Company, and to offer and grant prizes, rewards and premiums of such character and on such terms as seem expedient.

5. To undertake and transact all kinds of agency or business which an ordinary individual may legally undertake.

6. To provide and furnish or secure to any members of the Company, or customers, or to any subscribers to, or purchasers or possessors of, any publication of the Company, or of any coupon or ticket issued with any publication of the Company, any chattels, conveniences, advantages, benefits, or special privileges which may seem expedient, and either gratuitously or otherwise.

3. The duration of the corporation is Ninety-Nine (99) Years.

4. The location of the principal office is 1406 West Division Street Chicago, County of Cook State of Illinois.

5. The total authorized capital stock is (Common \$5000.00) and shares of (Common) stock.

6. The amount of each share having a par value is One Hundred Dollars (\$100.00).

7. The number of shares having a par value is Fifty (50).

8. The number of shares of no par value is None.

[fol. 466] 9. The name and address of the subscribers to the capital stock, and the amount subscribed and paid in by each, are as follows:

Name	Address	Number of Shares	Amount Subscribed	Amount Paid In
Jan Romaszkiewicz	2314 Cortez St., Chicago, Ill.	6	\$600.00	\$600.00
Chester Hibner	5355 Montrose Ave., Chicago, Ill.	6	600.00	600.00
Magdalena Milewski	4119 Montrose Ave., Chicago, Ill.	6	600.00	600.00
Albin S. Sacerbowski	2427 N. Central Ave., Chicago, Ill.	6	600.00	600.00
Joseph T. Spiker	11719 S. Michigan Ave., Chicago, Ill.	6	600.00	600.00
Frank X. Swietlik	Milwaukee, Wisconsin	5	500.00	500.00
Gregory Piwowarczyk	2237 W. 41st St., Chicago, Ill.	5	500.00	500.00
Michael Tomaszewicz	5040 W. 31st Pl., Cicero, Ill.	5	500.00	500.00
Jacob Twardzik	2038 W. 21st St., Chicago, Ill.	5	500.00	500.00

11. Amount of capital stock which it is proposed to issue at once:

(a) On shares having no par value —

(b) On shares having a par value of \$100.00 —

Common \$5000.00

12. Amount of capital stock actually paid in:

(a) On shares having no par value —

(b) On shares having a par value of \$100.00 —

Common \$5000.00

13. Amount of capital stock paid in cash is Five Thousand Dollars \$5000.00.

14. Capital stock paid in property as follows: None

None

15. The location and general description of such property is as follows:

[fol. 467] 16. The management of the corporation shall be vested in Nine (9) directors.

17. The name and address of the first board of directors, at least one of whom is a resident of Illinois, and the respective term for which elected are as follows:

Name	Address				Terms for Which Elected
	Number	Street	City	State	
Jan Romaszewicz	2314	Cortez St.,	Chicago,	Ill.	To April 30, 1934
Chester Hibner	5335	Montrose Ave.,	Chicago,	Ill.	To April 30, 1934
Magdalena Milewski	4119	Montrose Ave.,	Chicago,	Ill.	To April 30, 1934
Albin B. Sacerbowski	2427	N. Central Ave.,	Chicago,	Ill.	To April 30, 1934
Joseph T. Spiker	11719	B. Michigan Ave.,	Chicago,	Ill.	To April 30, 1934
Frank X. Swietlik		Milwaukee,	Wisconsin		To April 30, 1934
Gregory Piwowarczyk	2237	West 51st St.,	Chicago,	Ill.	To April 30, 1934
Michael Tomaszewicz	3040	West 31st Place,	Cicero,	Ill.	To April 30, 1934
Jacob Twardzik	2038	West 21st St.,	Chicago,	Ill.	To April 30, 1934

18. Subject to the conditions and limitations prescribed by "The General Corporation Act, this corporation shall have the following powers, rights and privileges:

To have succession by its corporate name for the period limited in its certificate of incorporation, or any amendment thereof;

To sue and be sued in its corporate name;

To have and use a common seal and alter the same at pleasure;

To have a capital stock of such an amount and divided into shares, with a par value or without a par value, and to divide such capital stock into such classes, with such preferences, rights, values and interests as may be provided in the Articles of Incorporation, or any amendment thereof; and in case provision be made therefor in the Articles of Incorporation, or any amendment thereof, any and all classes of preferred stock may be issued in one or more series of the same class, each such series carrying



such rate of dividends not exceeding eight per cent (8%) per annum, or such lesser amount as may be fixed in the Articles of Incorporation, or any amendment thereof, [fol. 468] and the shares of each such series being redeemable at such redemption price and bearing such particular designation as the Board of Directors subject to such restrictions as may be imposed in the Articles of Incorporation, or any amendment thereof, shall, by resolution, determine and fix prior to the issue of any such stock of such series: Provided, however, that whenever the Board of Directors shall, by resolution, have authorized any such series of preferred stock, a copy of such resolution, duly certified by the secretary or assistant secretary of the corporation, and under its seal, and the facts set up in such certificate verified by the oath of the President or Vice-President shall be transmitted to the Secretary of State, and if the same shall conform to law and to the Articles of Incorporation, and all amendments thereof, the same shall be filed in the office of the Secretary of State.

To acquire, and to own, possess and enjoy so much real and personal property as may be necessary for the transaction of the business of such corporation, and to lease, mortgage, pledge, sell, convey or transfer the same; and to acquire and to own real property, improved or unimproved for the purpose of providing homes for its employes or aiding its employes to acquire and own homes and to improve, lease, mortgage, contract to sell, sell, convey or transfer the same, and to loan money to its employes for such purpose upon such terms as may be agreed upon.

To own, purchase, or otherwise acquire, whether in exchange for the issuance of its own stock, bonds, or other obligations or otherwise, and to hold, vote, pledge, or dispose of the stocks, bonds, and other evidences of indebtedness of any corporation, domestic or foreign;

To borrow money at such rate of interest as the corporation may determine without regard to or restrictions under any usury law of this State, and to mortgage or pledge its property, both real and personal, to secure the payment thereof;

To elect officers, appoint agents, define their duties and fix their compensation;

To lease, exchange or sell all of the corporate assets with the consent of two-thirds of all of the outstanding capital

stock of the corporation at any annual meeting or at any special meeting called for that purpose;

[fol. 469] To make by-laws not inconsistent with the laws of this State for the administration of the business and interests of such corporation;

To conduct business in this State, other states, the district of Columbia, the territories, possessions and dependencies of the United States and in foreign countries and to have one or more offices out of this State, and to hold, purchase, mortgage, and convey real and personal property outside of this State necessary and requisite to carry out the object of the corporation;

In time of war to transact any lawful business in aid of the United States in the prosecution of war, to make donations to associations and organizations aiding in war activities; and to loan money to the State or Federal government for war purposes;

To cease doing business and to surrender its charter;

To have and exercise all the powers necessary and convenient to carry into effect the purpose for which such corporation is formed;

19. An estimate of the per cent of tangible property of the corporation to be used in Illinois for the following year is —

20. An estimate of the per cent of the business of the corporation which will be transacted at or from places of business in Illinois for the following year is —

21. Give the location of the principal places of business of the corporation for the following year and an estimate of the amount of business which will be transacted through each.

---



---



---



---

Jan Romaszkieviz, Albin S. Szczerbowski, Gregory

Piwowarczky, Incorporators.

## [fol. 470] OATH AND ACKNOWLEDGMENT

STATE OF ILLINOIS,  
Cook County, ss:

I, Stephanie X. Blaszczeni a Notary Public in and for the County and State aforesaid, do hereby certify that on the 17th day of April A. D., 1933 personally appeared before me Jan Romaszkievicz, Albin S. Szczerbowski and Gregory Piwowarczyk to me personally known to be the same persons who executed the foregoing and severally acknowledged that they executed the same for the purposes therein set forth, and being duly sworn hereby declared on oath that the foregoing statements made, subscribed and verified by them are true in substance and in fact.

In Witness Whereof, I have hereunto set my hand and seal the day and year above written.

Stephanie X. Blaszczeni, Notary Public. (Seal.)

### Corporation for Pecuniary Profit

#### Fees Payable in advance Statement of Incorporation of

Corporation of Polish National Alliance of the United  
States of North America Publication  
Incorporation Fees

Initial fee of 1/20 of one per cent, on the issued capital stock, with a minimum fee of \$20.00, also franchise fee as required by Section 129 of the General Corporation Act.

Note.—In paragraph 10 you should set out a brief description of the rights and preferences of the holders of preferred stock, or any other provision for the regulation of the business and the conduct of the affairs of the corporation. In case of a building corporation you will also give in the same space a specific and definite description of the side of such building. In order to avoid delay read carefully each paragraph in the statement before interpolating the data required. Before execution of the statement compare every recital in the statement and see whether or not it balances with every other recital relating to the same matter.

[fol. 471]

Certificate Number 1263

## STATE OF ILLINOIS

## Office of the Secretary of State

To all to whom these Presents Shall Come, Greeting:

Whereas, a Statement of Incorporation duly signed, acknowledged and verified under oath has been filed in the Office of the Secretary of State on the 24th day of April A. D. 1933, for the organization of the Corporation of Polish National Alliance of the United States of North America Publication under and in accordance with the provisions of "An Act in Relation to Corporations for Pecuniary Profit" approved June 28, 1919, and in force July 1, 1919 and all acts amendatory thereof a copy of which statement is hereto attached.

Now Therefore, I, Edward J. Hughes, Secretary of State of the State of Illinois by virtue of the powers and duties vested in me by law do hereby certify that the said Corporation of Polish National Alliance of the United States of North America Publication is a legally organized Corporation under the laws of this State.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois. Done at the City of Springfield this 24th day of April A. D. 1933 and of the Independence of the United States the one hundred and 57th.

Edward J. Hughes, Secretary of State. (Seal.)

Box 2287

No. 174658

## Articles of Incorporation of

Corporation of Polish National Alliance of the United States  
of North America Publication, Chicago

Capital Stock, \$5,000.00 and Duration 99 years

Filed Apr 24 1933 Edward J. Hughes.

To Be Filed in Duplicate

Please read instructions on back of report before attempting to execute

Date February 21, 1934.  
Filing Fee \$1.00  
Clerk GBK

**Certificate of Designation of Registered Office and Registered Agent by Foreign and Domestic Corporations**

(Stamped—Received Page 0122 Feb 27 '34 Line 16  
Edward J. Hughes Secy. of State)

STATE OF ILLINOIS,  
County of Cook, ss:

To Edward J. Hughes, Secretary of State, Springfield, Illinois.

The undersigned corporation, organized and existing under the laws of the State of Illinois, for the purpose of designating a registered office and registered agent, as required by the provisions of "The Business Corporation Act," of Illinois, represents that:

1. The name of the corporation is Corporation of Polish National Alliance of the United States of North America Publication.

2. Its registered office is 1406 W. Division St., Chicago, Illinois.

3. The name of its registered agent is A. S. Szczerbowski whose address is the same as that of its registered office.

4. Such designation was authorized by resolution duly adopted by the board of directors.

In Witness Whereof, the undersigned corporation has caused this report to be executed in its name by its — [fol. 473] President attested by its — Secretary, this 21st day of February, A. D. 1934.

Corporation of Polish National Alliance of the United States of North America Publication, by J. Romaszewicz, Its President (or Vice-President). (Corporate Seal.)

Attest: A. S. Szczerbowski, Its Secretary.



STATE OF ILLINOIS,  
Cook County, ss:

I, J. Janiga a Notary Public, do hereby certify that on the 21st day of February, A. D. 1934, personally appeared before me J. Romaszkievicz who declares he is President of the corporation, executing the foregoing document, and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

In Witness Whereof, I have hereunto set my hand and seal the day and year before written.

Jos. F. Janiga, Notary Public. (Notarial Seal.)

Box 2287

File 658

Certificate of Designation of Registered Office and Registered Agent of Corp. of Polish Natl. Alliance of U. S. of N. A. Publication. Filing Fee \$1.00

#### NOTICE

This certificate must be filed in duplicate. The corporation cannot act as its own registered agent.

The registered office may be, but need not be, the same as the place of business of the corporation, but the registered office and the registered address of the agent must be the same.

[fol. 474] Any subsequent change in the registered office or agent must be immediately reported to the Secretary of State on blanks furnished for that purpose.

Filed Feb 27 1934 Edward J. Hughes Secy. of State

Certificate Number 1043

STATE OF ILLINOIS

Office of the Secretary of State

To all to whom these Presents Shall Come, Greeting:

Whereas, Articles of amendment to the Article of Incorporation duly signed and verified of Corporation of Polish National Alliance of the United States of North America Publication have been filed in the Office of the

Secretary of State on the 16th day of June A. D. 1934, as provided by "The Business Corporation Act" of Illinois, in force July 13, A. D. 1933.

Now Therefore, I, Edward J. Hughes, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby issue this certificate of amendment and attach thereto a copy of the Articles of Amendment to the Articles of Incorporation of the aforesaid corporation.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois. Done at the City of Springfield this 16th day of June A. D. 1934 and of the Independence of the United States the one hundred and 58th.

Edward J. Hughes, Secretary of State. (Seal.)

[fol. 475]

Date \_\_\_\_\_

Filing Fee \$ \_\_\_\_\_

Clerk \_\_\_\_\_

(Stamped—Paid \$20.00 June 16 1934 Edward J. Hughes  
Secretary of State. By W E L Corp. Dept.)

Articles of Amendment to the Articles of Incorporation of  
Corporation of Polish National Alliance of the United  
States of North America Publication

(Stamped—Received Page 0537 Jun 16 '34 Line 27  
Edward J. Hughes Secy. of State)

To Edward J. Hughes, Secretary of State, Springfield,  
Illinois:

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of Section 55 of "The Business Corporation Act" of the State of Illinois, hereby executes the following Articles of Amendment:

Article First: The name of the corporation is: Corporation of Polish National Alliance of the United States of North America Publication

Article Second: The following amendment or amendments were adopted in the manner prescribed by "The Business Corporation Act" of the State of Illinois: The

name of this Corporation shall be: Alliance Printers and Publishers Incorporated.

(Disregard separation into classes if class voting does not apply to the amendment voted on.)

**Article Third:** The number of shares of the corporation outstanding at the time of the adoption of said amendment or amendments was Fifty (50); and the number of shares of each class entitled to vote as a class on the adoption of [fol. 476] said amendment or amendments, and the designation of each such class were as follows:

Class	Number of Shares
-------	------------------

(Disregard separation into classes if class voting does not apply to the amendment voted on.)

**Article Fourth:** The number of shares voted for said amendment or amendments was Thirty-four (34); and the number of shares voted against said amendment or amendments was —. The number of shares of each class entitled to vote as a class voted for and against said amendment or amendments, respectively, was:

Class	Number of Shares Voted For	Against
-------	-------------------------------	---------

(Disregard this Article where the amendments contain no such provisions.)

**Article Fifth:** The manner in which the exchange, reclassification, or cancellation of issued shares, or the reduction of the number of authorized shares of any class below the number of issued shares of that class, provided for by said amendment or amendments, shall be effected, is as follows:

(Disregard this Paragraph where amendments do not affect stated capital or paid-in surplus.)

**Article Sixth: Paragraph 1:** The manner in which said amendment or amendments effecting a change in the amount

of stated capital or the amount of paid-in surplus, or both, is effected is as follows:

(Disregard this Paragraph where amendments do not affect stated capital or paid-in surplus.)

Paragraph 2: The amounts of stated capital and of paid-in surplus as changed by said amendment or amendments are as follows:

	Before Amendment	After Amendment
Stated capital	\$	\$
Paid-in surplus	\$	\$

[fol. 477] In Witness Whereof, the undersigned corporation has caused these Articles of Amendment to be executed in its name by its — President, and its corporate seal to be hereto affixed, attested by its — Secretary, this 15th day of June, 1934.

Corporation of Polish National Alliance of the United States of North American Publication. By J. Romaszkievicz, Its President. (Corporate Seal.)

Attest: A. S. Szczerbowski, Its Secretary.

STATE OF ILLINOIS,  
County of Cook, ss:

I, Elizabeth J. Bebecz, a Notary Public, do hereby certify that on the 15th day of June, 1934, personally appeared before me J. Romaszkievicz, known to me to be the — President of the corporation executing the foregoing document, and being first duly sworn by me acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

In Witness Whereof, I have hereunto set my hand and seal the day and year before written.

Elizabeth J. Bebecz, Notary Public.

Box 2287

File 174658

Articles of Amendment to the Articles of Incorporation of Corporation of the Polish National Alliance of the United

States of North America Publication changed to Alliance Printers and Publishers Incorporated. Filed Jun 16 1934 Edward J. Hughes Secretary of State. Filing Fee \$20.00.

[fol. 478]

Date 10-4-37.  
Filing Fee \$1.00  
Clerk T H R

**Certificate of Change of Registered Agent and Registered Office by a Foreign or Domestic Corporation of Illinois**

(Stamped—Received Page 1243 Oct -4 -37 Line 35  
Edward J. Hughes, Secy. of State)

STATE OF ILLINOIS,  
Cook County, ss:

To Edward J. Hughes, Secretary of State, Springfield, Ill.

The undersigned corporation, organized and existing under the laws of the State of — for the purpose of changing its registered agent and its registered office, or both, in Illinois as provided by the provisions of "The Business Corporation Act," of Illinois, represents that:

1. The name of the corporation is Alliance Printers and Publishers, Inc.

2. The address, including street and number, if any, of its present registered office is 1406 W. Division Street, Chicago, Ill.

3. Its registered office is hereby changed to 1406 W. Division Street (including street and number if any change in the registered office is to be made).

4. The name of its present registered agent is A. S. Szczerbowski.

5. The name of the new registered agent is C. Kowalski.

6. The address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

[fol. 479] 7. Such change was authorized by resolution duly adopted by the board of directors.



In Witness Whereof, the undersigned corporation has caused this report to be executed in its name by its — President attested by its — Secretary, this 23rd day of September, A. D. 1937.

J. Romaszkievicz, President. (Corporate Seal.)

Attest: A. S. Szczerbowski, Secretary.

STATE OF ILLINOIS,

County of Cook, ss:

I, A. E. Palnszenski, a Notary Public, do hereby certify that on the 23rd day of September, A. D. 1937, personally appeared before me J. Romaszkievicz who declares he is President of the corporation, executing the foregoing document, and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

In Witness Whereof, I have hereunto set my hand and seal the day and year before written.

A. E. Palnszenski, Notary Public. (Notarial Seal.)

Box 2287

File 658

Change of Registered Agent and Office of Alliance Printers & Publishers Inc.

Filing Fee \$1.00

#### NOTICE

This certificate must be filed in duplicate. The corporation cannot act as its own registered agent.

The registered office may be, but need not be, the same as the place of business of the corporation, but the registered office and the registered address of the agent must be the same.

Any subsequent change in the registered office or agent must be immediately reported to the Secretary of State on blanks furnished for that purpose.

Filed Oct 4 1937 Edward J. Hughes Secy. of State.

Certified Copy of

---



---



---



---



---

STATE OF ILLINOIS

Office of Secretary of State

[fol. 481] RESPONDENT'S EXHIBIT No. 6

POLISH NATIONAL ALLIANCE

Schedule of Disbursements for Mortuary Claims and  
Various Activities From the Date of Organization  
(1880) to December 31, 1940

*Mortuary Claims Paid* ..... \$38,076,756.73

*Educational Purposes*

Alliance College .....	\$2,901,906.68	
Educational Department, Scholarships, Schools, etc. ....	570,614.09	
P. N. A. Library in Chicago .....	101,337.98	
Kosciuszko Foundation .....	31,344.15	
Poland Magazine .....	5,000.00	
Promotion of Music .....	1,110.00	
Miscellaneous .....	9,550.00	3,620,862.90

*National Purposes*

P. N. A. Youth	\$674,274.39	
Immigration Home in Poland	2,428.46	
Pavilion in Poland	25,050.00	
National Defense Committee	2,125.00	
For the Hungry in Poland	195,271.05	
Citizenship Fund	517,140.03	
May Donations	69,072.70	
Polish Army	22,234.08	
10 Million Fund	119,125.79	
Museum in Rappersville	48,212.97	
Plebiscite	142,966.76	
Striking Miners in Pennsylvania	54,398.87	
Christmas for the Poor	23,952.43	

{fol. 482}

Exposition in Posen	7,757.42	
Excursion to Poland	34,491.80	
Hausner Airplane	1,313.00	
Council of All Poles	14,935.97	
Polish Relief Fund	433,457.90	
Miscellaneous	750.00	2,388,959.52

*Relief Purposes*

Relief Department	\$565,995.31	
Old Age Assessments	5,185.60	
Payments to People Visited by Calamities in the U. S.	11,963.94	
Payments to Poor in Poland	14,383.90	
Payments to Cripples in the Polish Army	30,438.64	
P. N. A. Welfare Department	43,466.61	
Flood Victims in Poland	13,453.27	
Miscellaneous	13,156.67	698,042.94

*Commissions and Departments.*

Immigration Commission in N. Y. ....	\$236,351.28	
Help to Immigrants .....	8,134.31	
Polish Army .....	15,123.00	
Singers Society .....	17,147.33	
Womens Department .....	23,144.90	
Polish Falcons .....	14,527.09	
Miscellaneous .....	2,140.11	316,568.02

*Civic Manifestations and  
Memorials*

Kosciuszko Monument in Wash- ington .....	\$47,052.75	
Kosciuszko Monument in Chi- cago .....	19,000.00	
Celebrations .....	11,580.26	
Festivals .....	5,590.29	
Polish Army Monument .....	1,614.63	
Pilsudski Monument .....	490.56	
Miscellaneous .....	25.00	85,353.49
<b>Total</b> .....		<b>\$45,186,543.60</b>

**[fols. 483-489] POLISH NATIONAL ALLIANCE**

**Benevolent Fund Disbursements January 1, 1941 to Dec.  
31, 1941.**

*For Relief*

Welfare Department .....	\$3,141.42	
Polish Relief .....	65,117.12	
Old Age Assessments .....	7,923.67	
Council Relief .....	12,667.15	
Paderewski Relief Fund .....	220.00	
American Red Cross .....	5,000.00	
Miscellaneous Relief .....	149.50	
Christmas for Poor .....	327.50	\$94,546.36

*For Commissions and Departments*

Womens Department		1,228.30
-------------------	--	----------

*For Education*

Alliance College	76,497.72	
Educational Department	12,749.59	
P. N. A. Library	4,838.37	94,085.68

*For National Purposes*

Polish Army	357.21	
P. N. A. Youth Department	58,012.33	
Polish Veterans	3,980.15	62,349.69

Total		\$252,210.03
-------	--	--------------

. . . . .

[fol. 490]      RESPONDENT'S EXHIBIT No. 11

(Letterhead of)

Polish National Alliance of the United States of North  
America. Office of the President, P. N. A. 1514-20 W.  
Division Street

Chicago, March 27th, 1941.

Office Employees Union No. 20732, 666 Lake Shore Drive,  
Chicago, Illinois.

Attention: Mr. Paul Ackerman

GENTLEMEN:

In response to your correspondence under the date of  
March 24th, permit me to state the opinion and position  
of our Association in the premises.

First:—Our Association is an Illinois, non-profit, fraternal benefit society, granting to its membership certain mortuary and disability benefits. All of our employees are members of our Association. We deem ourselves, in line with the decisions of the Supreme Court of the United States, as not engaged in "commerce" and consequently



not within the contemplation of the provisions of the Federal National Labor Relations Act.

Second:—Without having it deemed as abandoning or waiving the above premise, we do not concede, but on the contrary contest and take issue with the claim that the majority of our employees are members of and have designated your Union as their exclusive bargaining representative within the intent of the Federal National Labor Relations Act.

Yours very truly, I. K. Rozmarek, President.

CEM:KW.

[fol. 491]

RESPONDENT'S EXHIBIT No. 12

DZIENNIK ZWIAZKOWY

POLISH DAILY ZGODA

Entered as second class matter January 9, 1908, at the Post Office at Chicago, Illinois under the act of March 3, 1879.

Published daily except Sundays and Holidays by  
Alliance Printers and Publishers, Inc.,

1406-08 W. Division Street, Chicago, Illinois

Member Audit Bureau of Circulation (American Flag)

(Country Edition)  
including Saturday  
Supplement

Postal Edition Daily

Annually	\$5.00	Annually	\$6.50
Semi-Annually	2.75	Semi-annually	3.50
Quarterly	1.50	Quarterly	2.00
Monthly	.60	Monthly	.75

City Edition transmitted by  
mail beyond the limits  
of Chicago

City Edition transmitted by  
mail in Chicago

Annually	7.50	Annually	8.50
Semi-annually	4.00	Semi-annually	4.50
Quarterly	2.00	Quarterly	2.50
Monthly	.75	Monthly	1.00

At stands single number daily 3¢

At stands single number Saturday issue 5¢

Saturday edition alone 32 to 40 or more pages

In the United States		To other countries	
Annually .....	2.50	Annually .....	3.00
Semi-annually .....	1.50	Semi-annually .....	1.75
Quarterly .....	.85	Quarterly .....	1.00

[fol. 492]

In Canada

Country Edition		The same addition with the Saturday Supplement	
Annually .....	6.50	Annually .....	9.35
Semi-annually .....	3.50	Semi-annually .....	4.75
Quarterly .....	1.85	Quarterly .....	2.50

Charles Piatkiewicz, Editor in Chief

J. Stanley Swierczynski, Manager

Phone: All Departments Brunswick 8700

Telephone to all Departments Brunswick 8700

Manuscripts and Photographs are not returnable by the Editor

OUR SLOGAN: Unity, Fraternalism and Honesty: Labors for Polish National Alliance; Labors for Poland, Labors for the Community!

#### RESPONDENT'S EXHIBIT No. 13

Dziennik Zwiazkowy (Zgoda), Sroda, 8-Go Pazdziernika (October), 1941

Statement of the Ownership, Management, Circulation, Etc.  
Required by the Act of Congress of Aug. 24, 1912, and March 3, 1933

Of Dziennik Zwiazkowy, published daily at Chicago, Illinois, for October 1, 1941, State of Illinois, County of Cook.

Before me, a Notary Public in and for the State and County aforesaid personally appeared J. S. Swierczynski, who, having been duly sworn according to law, deposes and

says, that he is the Business Manager of the Dziennik Zwiazkowy, and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management, and (if a daily paper, the circulation etc.), of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, as amended by the Act of March 3, 1933, embodied in Section 537, Postal [fol. 493] Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business manager are:

Publisher, Alliance Printers and Publishers, Inc., 1406 W. Division St.

Editor, K. Piatkiewicz, 1406 W. Division St.

Managing Editor, K. Piatkiewicz, 1406 W. Division St.

Business Manager, J. S. Swierczynski, 1406 W. Division St.

2. That the owner is: (if owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding one per cent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a firm, company, or other unincorporated concern, its name and address, as well as those of each individual member, must be given).

Alliance Printers and Publishers, Inc., an Illinois Corporation.

Ign. K. Robmarek, President, 1520 W. Division St.

A. S. Szerbowski, Secretary, 1520 W. Division St.

M. Tomasziewicz, Treasurer, 1520 W. Division St.

3. That the known bondholders, mortgagees and other security holders owning or holding 1 per cent or more of total amount of bonds mortgages or other securities are: (if there are none, so state).

The Polish National Alliance of the U. S. of N. A.

4. That the two paragraphs next above giving the names of the owners, stockholders, and security holders if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in

any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing [fol. 494] affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest, direct or indirect in the said stock, bonds, or other securities than as so stated by him.

5. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the twelve months preceding the date shown above is 33,526.

(This information is required from daily publications only.)

J. S. Swierczynski, Business Mgr.

Sworn to and subscribed before me this 3rd day of October, 1941. Irene M. Krawiec, Notary Public.  
(My commission expires 2/8, 1944.) (Seal.)

NOTE—This statement must be made in duplicate and both copies delivered by the publisher to the postmaster, who shall send one copy to the Third Assistant Postmaster General (Division of Classification), Washington, D. C., and retain the other in the files of the post office. The publisher must publish a copy of this statement in the second issue printed next after its filing.

---

RESPONDENT'S EXHIBIT No. 14

The statement will appear in the transcript that Respondent's Exhibit 14 is the same as Exhibit B to the Answer of Respondent heretofore contained in the transcript.

[fol. 495] BEFORE THE NATIONAL LABOR RELATIONS BOARD  
TRIAL EXAMINING DIVISION, WASHINGTON, D. C.

Case No. XIII-C-1692

In the Matter of POLISH NATIONAL ALLIANCE OF THE UNITED  
STATES OF NORTH AMERICA and OFFICE EMPLOYERS' UNION  
No. 20732, A. F. of L.

Mr. Lester Asher and Mr. Robert T. Drake, for the Board.  
Mr. Casimir E. Midowicz and Mr. Ewart Harris, of Chi-  
cago, Ill., for the respondent.

Mr. S. G. Lippman, of Chicago, Ill., for the Union.

**Intermediate Report**

**STATEMENT OF THE CASE**

Upon a third amended charge duly filed on March 9, 1942, by Office Employes' Union No. 20732, A. F. of L., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint dated March 9, 1942, against Polish National Alliance of the United States of North America, Chicago, Illinois, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, together with notice of hearing thereon, were duly served upon the respondent and the Union. On March 11, 1942, the Union filed a [fol. 496] fourth amended charge.<sup>1</sup> On March 12, 1942, the Regional Director for the Thirteenth Region issued an amendment to the complaint, based thereupon. Copies of the amendment were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint, as amended, alleged, in substance, that the respondent: (1) on and after March 26, 1941, refused to bargain col-

---

<sup>1</sup> It altered, in certain respects, the unit alleged to be appropriate.



lectively with the Union, which was at all times the duly designated exclusive representative of the majority of its employees at its Chicago, Illinois, office in an appropriate unit; (2) on October 6, 1941, discharged and thereafter refused to reinstate Anna Owsiak because she joined the Union and engaged in concerted activities; (3) on or about April 1, 1941, and thereafter, warned and discouraged its employees against union membership or activity, interrogated them respecting their membership in the Union, disparaged the Union, and offered wage increases to certain employees on condition that they abandon their union membership and activities; (4) by such acts caused its office employees to go out on strike on October 7, 1941, prolonged such strike to January 27, 1942, by continuing its unfair labor practices, including warning and urging its striking employees to abandon their concerted activities and return to work; (5) on and after October 10, 1941, refused upon request to reinstate Henry Ziolkowski, a striking employee, because of his union membership and activity; (6) on and after January 27, 1942, refused upon request to reinstate 26 named striking employees<sup>2</sup> because of their union membership and activity; and (7) by the foregoing conduct interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

On March 20, 1942, the respondent filed its answer, denying that it was within the jurisdiction of the Board and that it had committed any unfair labor practices, and setting up certain affirmative defenses.

Pursuant to notice, a hearing was held at Chicago, Illinois, from March 23 to 27, 1942, before the undersigned, [fol. 497] Josef L. Hektoen, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented by counsel; all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the close of the evidence, counsel for the Board moved to conform the complaint to the proof in regard to formal matters; the motion was allowed without objection. At the close of the hearing the parties argued orally before

<sup>2</sup> They are listed in Appendix A.

the undersigned and the respondent thereafter filed a brief with him.

Upon the entire record in the case, the undersigned makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The respondent, Polish National Alliance of the United States of North America, is a fraternal benefit society incorporated under the laws of Illinois. It maintains its head office in Chicago. It provides death, disability, and accident benefits to its members and their beneficiaries. It is "the largest fraternal organization in the world of Americans of Polish descent."

The respondent is organized into lodges of which there are 1817 in 27 States of the United States, the District of Columbia, and Manitoba, Canada. It is licensed to do business in 26 States, the District of Columbia, and Manitoba, Canada.

On December 31, 1941, the respondent had 272,897 benefit certificates with a total face value of \$159,683,583 in force. As of the same date, it owned admitted assets of \$30,090,835. Among such assets were:

Cash (in Illinois and Indiana banks)	\$1,059,236
U. S. Government bonds and obligations	2,451,056
Bonds of U. S. political subdivisions	6,141,863
Railroad and equipment bonds	1,694,491
Public utility bonds	1,007,461
Industrial bonds	1,749,275
Stocks	29,750

[fol. 498] Mortgage loans on real estate in

Illinois	2,420,843
Indiana	321,159
Michigan	2,000
Wisconsin	2,308

Real estate in

Illinois	9,228,443
Indiana	1,586,557
Michigan	14,829
New York	25,193
Wisconsin	7,954

During 1941, its total income was \$5,717,344.09, of which \$3,723,365.21 was received from members and \$1,690,250.57 from investments. During the same period, benefits paid totalled \$1,845,126.33.

The respondent's business is managed and directed by officers and directors located at the head office. All terms and conditions of its certificates are determined, its investments made, applications for certificates, claims, and loans acted upon, and all certificates and checks executed at the head office. Its securities are purchased through licensed dealers and, with the exception of \$11,000 thereof, on deposit with authorities in Manitoba, Canada, are kept at the head office.

Sub-standard risks of the respondent are reinsured through Lincoln National Life Insurance Company, Fort Wayne, Indiana. At the time of the hearing from \$250,000 to \$300,000 of such insurance was in force.

The respondent employs Retail Credit Company, Atlanta, Georgia, to render inspection reports on applicants for certificates. During 1941, the respondent paid it \$4,384.65 for such services.

The respondent pays commissions to organizers in 26 States and, in 1941, it spent \$2,708.19 for their travelling expenses. During the same period it spent \$10,661.55 for advertising in newspapers, magazines, radio, and other media, as well as \$1,340.57 for printing, outside Illinois. It publishes and sells an official 250 to 300 page almanac throughout the United States. The twice-monthly meetings of its board of directors are reported in printed [fol. 499] pamphlets of about 64 pages which are sent to the respondent's approximately 190 councils,<sup>3</sup> 160 of which are outside Illinois.

Alliance Printers and Publishers, Inc.; herein called Alliance, is an Illinois corporation having its place of business in Chicago.<sup>4</sup> Its capital stock is \$5,000 and is held by the

<sup>3</sup> Councils are composed of lodges and may represent upwards of 5000 members of the respondent.

<sup>4</sup> The respondent formerly conducted a printing and publishing department as a part of its operations. It published newspapers and did the respondent's printing. In 1933, the Director of Insurance of the State of Illinois found that the respondent had no power under its charter to conduct such

15 officers and directors of the respondent by virtue of their offices. Its officers and directors are chosen from those of the respondent. Its board of directors appoints the business manager. Its editorial staff is appointed by the Censor<sup>3</sup> of the respondent.

It publishes the weekly *Zgoda*, official publication of the respondent which is mailed to each member; 6,857,556 copies thereof were published in 1941, about 80 percent of which were mailed to persons residing outside Illinois. It publishes the daily *Zgoda*<sup>4</sup>, which is a member of the Audit Bureau of Circulations and of the United Press; 7,785,524 copies thereof were published in 1941, about 15 per cent of which were mailed to persons residing outside Illinois. During 1941, it bought paper for printing these publications in the amount of \$59,474.41, all of which originally came from points outside Illinois. It does all of the respondent's [fol. 500] printing, and job printing. The undersigned finds that Alliance is owned and controlled by the respondent.

The respondent contends that it is not engaged in commerce, within the meaning of the Act, because it is a "fraternal benefit association having the lodge system and ritual, binding its members by fraternal ties, and animating them with the spirit of devotion to a free Poland," and because it is not animated by "the profit motive" and lays stress upon its cultural activities. The respondent also

---

printing and publishing activities. On April 24, 1933, Corporation of Polish National Alliance of the United States of North America Publication was incorporated under the laws of Illinois and on May 1, 1934, that corporation took over such activities. Its corporate name was changed to Alliance Printers and Publishers, Inc., on June 16, 1934.

<sup>3</sup> The Censor, F. X. Swietlik, of Milwaukee, Wisconsin is "the ranking officer and representative" of the respondent. His position is "more or less honorary" but carries with it the power to veto actions of the Board of Directors.

<sup>4</sup> During the strike which began October 7, 1941, and continued to January 27, 1942, as hereinafter found, Alliance was picketed by the striking employees of the respondent. As a consequence, publication of the daily *Zgoda* was suspended for a period of 5 days.

points to the fact that since it was organized in 1880, it has expended more than three and a half million dollars for "educational purposes," including the maintenance of Alliance College, Cambridge Springs, Pennsylvania; almost two and a half million dollars for "national purposes"; about \$700,000 for relief purposes; and more than \$400,000 for other purposes, including the erection of monuments, help to Polish immigrants, and the like.

The activities of the respondent in issuing benefit certificates and its attendant investments of large funds place it in the category of an insurance company. As the Board stated in the *John Hancock Mutual Life Insurance Company* case,<sup>7</sup> holding that the company was engaged in commerce, within the meaning of the Act: "The nature and extent of the facilities which insurance companies afford to the commercial life of the nation are so well known as to require neither proof nor discussion \* \* \*. The amount of money annually invested by insurance companies in commercial enterprises of almost every description is huge; that its withdrawal from the money market would seriously impair that free flow of capital and credit which is essential to the commercial life of the United States is beyond question." This applies with equal force to the smaller but nevertheless very extensive activities of the respondent.

The respondent's ownership and control of Alliance further establishes beyond doubt that the respondent is plainly engaged in commerce. The fact that the respondent [fols. 501-520] does not seek to earn profits in the usual sense is immaterial. Thus, the Board has found that the American Medical Association, "a non-profit scientific and educational organization of physicians incorporated under the laws of the State of Illinois relating to non-profit corporations," is engaged in commerce, within the meaning of the Act.<sup>8</sup>

The undersigned therefore finds that the operations of the respondent have a close, intimate, and substantial relation to trade, traffic, commerce, transportation, and communication among the several States.

<sup>7</sup> 26 N. L. R. B., No. 105.

<sup>8</sup> *Matter of American Medical Association and Chicago Mailers Union No. 2, et al.*, 39 N. L. R. B., No. 64.



## II. The Organization Involved

Office Employees' Union No. 20732, is a labor organization affiliated with the American Federation of Labor. It admits office employees of the respondent's Chicago, Illinois, office to membership.

### [fols. 521-522] IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

. . . . .

### [fol. 523] CONCLUSIONS OF LAW

1. Office Employees' Union No. 20732, A. F. of L., is a labor organization, within the meaning of Section 2 (5) of the Act.

2. The office employees of the respondent's Chicago, Illinois, office, excluding janitors, attorneys, elected officers, the manager of the real estate department, the inspector of the rent collection department, rent collectors, the chief organizer of the organization department, the personal secretary to the president, the personal secretary to the [fols. 524-529] general secretary, the confidential secretary to the Censor (employed in Milwaukee, Wisconsin), the assistant secretary (administrative) to the general secretary, the assistant secretary (administrative) to the treasurer, the librarians, at all times material herein constituted and now constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Office Employees' Union No. 20732, A. F. of L., was on March 26, 1941, and at all times thereafter has been, the exclusive representative of all the employees in such unit for the purpose of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with Office Employees' Union No. 20732, A. F. of L., as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By discriminating against the employees named in Appendix A, Anna Owsiak, and Henry Ziolkowski in respect to their hire and tenure of employment, thereby discouraging membership in Office Employees' Union No. 20732, A. F. of L., the respondent had engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the respondent has engaged and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

. . . . .

[fol. 530] BEFORE THE NATIONAL LABOR RELATIONS BOARD,  
WASHINGTON, D. C.

(Caption—Case No. C-2176 (XIII-C-1692))

### **Exceptions by Respondent Polish National Alliance to the Intermediate Report**

Respondent, Polish National Alliance of the United States of North America, excepts to the Intermediate Report filed herein by Trial Examiner Josef L. Hektoen as follows:

#### **FINDINGS OF FACT**

##### **1. Business of Respondent**

1. The Report fails to find that Respondent is incorporated under the Laws of Illinois as a not for profit corporation, "organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit; and that the Charter issued to Respondent provides, among

other things that "the purpose of the Alliance shall be to promote the cultural, social and economic advancement of its members to foster fraternalism and patriotism among them"; and that Respondent is empowered by its Charter to: "provide for the promotion of educational and fraternal activities among its members."

2. The findings as to the business and activities of Alliance Printers and Publishers Inc. are irrelevant to the issues herein; and the finding that the Alliance Printers and Publishers Inc., is owned and controlled by the Respondent is not supported by the evidence; nor do the findings as to the Alliance Printers and Publishers Inc. bring the Respondent within the provisions of the Act.

3. The finding that Respondent is in the category of an insurance company is not warranted by the evidence, nor inferable therefrom as a matter of law.

4. The finding that the operations of Respondent have a close, intimate and substantial relation to trade, traffic [fols. 531-535] commerce, transportation and communication among the several States is not supported by the evidence and is contrary to the law.

#### [fol. 536] IV. The Alleged Effect of the Charged Unfair Labor Practices Upon Commerce.

26. The finding that the alleged activities of Respondent set forth in Section 111 of the Report, occurring in connection with the operations of the Respondent as set forth in Section 1 have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce is not supported by the evidence, and is contrary to the law applicable to such evidence, and to the law in this case, and to the Constitution of the United States.

#### V. The Remedy Proposed

27. Respondent excepts to each and every recommendation contained in the Report under this Section; upon the grounds that such Recommendations, and each and every one of them is based upon findings which are not supported by the evidence and are contrary to the law applicable to the facts in this case; or against the weight of the evidence;

or are contrary to the law; and the Respondent not being engaged in Commerce within the meaning of the Constitution of the United States and of the Act in question.

[fol. 537]

#### CONCLUSIONS OF LAW

28. Respondent excepts to Conclusions of Law numbered 2 to 7 inclusive, and each and every one of such conclusions, as not being supported by the evidence and as being contrary to the law; and in so far as such Conclusions are based upon the Findings of the Report, they are based upon Findings which are unsupported by the evidence and are contrary to the law, or against the weight of the evidence, or against the law. And the Respondent has not been shown to be engaged in Commerce or that its activities affect Commerce, within the meaning of the Constitution of the United States and the provisions of the Act in question.

#### RECOMMENDATIONS

29. Respondent excepts to the Recommendations contained in the Report, and to each and every one of them, upon the ground that such Recommendations, and each and every one of them, are based upon Findings which are not supported by the evidence and are contrary to the law, or are against the weight of the evidence, or are against the law; and upon invalid Conclusions of Law drawn from the Record and Findings herein, to all of which Exceptions have been taken herein. Nor does the Record show that Respondent is engaged in Commerce or in activities which affect Commerce within the meaning of the Constitution of the United States and the provisions of the Act in question.

Wherefore Respondent prays that the Report be disapproved and the Complaint as amended, dismissed.

[fol. 538] Before the National Labor Relations Board

(Caption—Case No. C-2176)

Room 442  
Shoreham Building  
Washington, D. C.

A hearing was held in the above matter for the purpose of Oral Argument at the above place July 9, 1942 at 2:00

p. m. Before: Harry A. Millis, Chairman; William M. Leiserson, Member.

**Appearances:**

Of Counsel to the Board:

Marvin C. Wahl.

For the Company:

Ewart Harris,  
139 N. Clark Street,  
Chicago, Ill.

Casimir E. Midowicz,  
139 N. Clark St.,  
Chicago, Ill.

For the Union:

None

**Before the National Labor Relations Board  
(Caption—Case No. C-2176)**

Mr. Lester Asher and Mr. Robert T. Drake,  
for the Board.

Mr. Casimir E. Midowicz and Mr. Ewart Harris,  
of Chicago, Ill., for the respondent.

Mr. S. G. Lippman,  
of Chicago, Ill., for the Union.

Mr. Marvin C. Wahl,  
of counsel to the Board.

[fol. 539]

**Decision and Order**

**STATEMENT OF THE CASE**

Upon an amended charge duly filed by Office Employees' Union No. 20732, A. F. of L., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint dated March 9, 1942, against Polish National Alliance of the United States of North America, Chicago, Illinois, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, together with notice of hearing thereon, were duly served upon the respondent and the Union. The Union thereafter



filed another amended charge, and on March 12, 1942, the Regional Director accordingly issued an amendment to the complaint. Copies of the amendment were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint, as amended, alleged, in substance, that the respondent: (1) since March 26, 1941, has refused to bargain collectively with the Union for the employees in an appropriate unit, although the Union has been the exclusive representative of such employees; (2) on or about April 1, 1941, and thereafter, warned its employees against belonging to the Union or engaging in union activity, interrogated them respecting their membership in the Union, disparaged the Union, offered wage increases to certain employees on condition that they abandon their union membership and activities; (3) on October 6, 1941, discharged, and thereafter refused to reinstate, Anna Owsiak because she had joined the Union and engaged in concerted activities; (4) by such acts caused its office employees to go out on strike on October 7, 1941, and by continuing its unfair labor practice, including warning and urging its striking employees to abandon their concerted activities and return to work, prolonged said strike to January 27, 1942; (5) since October 10, 1941, refused upon request to reinstate Henry Ziolkowski, a striking employee, because of his union membership and concerted activity; (6) since January 27, 1942, refused upon request to reinstate 26 named striking employees<sup>1</sup> because of their union membership and concerted activity; and (7) by the foregoing acts has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On March 20, 1942, the respondent filed its answer, denying that it was engaged in commerce within the meaning of the Act and that it had committed any unfair labor practices, and setting up certain affirmative defenses.

Pursuant to notice, a hearing was held at Chicago, Illinois, from March 23 to 27, 1942, inclusive, before Josef L. Hektoen, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing

---

<sup>1</sup> They are listed in Appendix A.

on the issues was afforded all parties. At the close of the hearing, counsel for the Board moved to conform the complaint to the proof in regard to formal matters; the Trial Examiner granted the motion without objection. During the course of the hearing, the Trial Examiner ruled on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

The Trial Examiner thereafter filed his Intermediate Report, dated April 28, 1942, copies of which were duly served upon the parties. He found that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act, and recommended that it cease and desist therefrom and take certain affirmative action, including the reinstatement of Anna Owsiak, Henry Ziolkowski, and the 26 striking employees with back pay, [fol. 541] deemed necessary to effectuate the policies of the Act. On May 29, 1942, the respondent filed exceptions to the Intermediate Report and a brief in support of the exceptions.

Pursuant to notice, a hearing was held before the Board at Washington, D. C., on July 11, 1942, for the purpose of oral argument. The respondent was represented by counsel and presented argument to the Board.

The Board has considered the exceptions to the Intermediate Report and the brief in support thereof and, insofar as the exceptions are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

#### FINDINGS OF FACT

##### I. The Business of the Respondent

The respondent, Polish National Alliance of the United States of North America, is a fraternal benefit society incorporated under the laws of Illinois, and maintaining its principal office in Chicago. It provides death, disability, and accident benefits to its members and their beneficiaries. It is "the largest fraternal organization in the world of Americans of Polish descent." The respondent is

organized into 1817 lodges in 27 States of the United States, the District of Columbia, and Manitoba, Canada, and is licensed to do business in 26 States, the District of Columbia, and Manitoba, Canada.<sup>2</sup> Delegates are selected from a group of lodges and together constitute a council. The respondent has approximately 190 councils, 160 of which are outside the State of Illinois.

On December 31, 1941, the respondent had in force 272,897 insurance benefit certificates with a total face value of \$159,683,583. As of the same date, it owned admitted assets of \$30,090,835. Among such assets were:

[fol. 542] Cash (in Illinois and Indiana banks) <sup>3</sup>	\$1,059,236
U. S. Government bonds and obligations	2,451,056
Bonds of State of U. S. and political subdivisions of States	6,141,863
Bonds of foreign countries (Canada, Poland)	14,797
Railroad and equipment bonds	1,694,491
Public utility bonds	1,007,461
Industrial bonds	1,749,275
Stocks	29,750
Mortgage loans on real estate in	
Illinois	2,420,843
Indiana	321,159
Michigan	2,000
Wisconsin	2,308
Real estate in	
Illinois	9,223,443
Indiana	1,586,557
Michigan	14,829
New York	25,193
Wisconsin	7,954

During 1941, its total income was \$5,717,344, of which \$3,723,364 was received from members and \$1,690,250 from

<sup>2</sup> These findings are based upon a stipulation of the parties. However, the respondent's "Annual Statement" indicates that the respondent is authorized to transact business in each of the 27 States where it maintains lodges.

<sup>3</sup> The respondent's "Annual Statement" shows that it also has cash on deposit in Pennsylvania banks.

investments. During the same period, benefits paid totaled \$1,845,126.

The respondent's business is managed and directed by officers and directors located at the Chicago office. All terms and conditions of its insurance certificates are determined, investments made, applications for certificates, claims, and loans acted upon, and all insurance certificates and checks executed, at the home office. Its securities are purchased through licensed dealers and, with the exception of \$11,000 thereof on deposit with authorities in Manitoba, Canada, are kept in Chicago.

[fol. 543] Substandard risks of the respondent are reinsured through Lincoln National Life Insurance Company, and all reinsurance documents are sent to the company's home office at Fort Wayne, Indiana. At the time of the hearing from \$250,000 to \$300,000 of such insurance was in force. The respondent employs Retail Credit Company, Atlanta, Georgia, to render inspection reports concerning the financial standing and character of applicants for insurance certificates. During 1941, the respondent paid that company \$4,384 for such services.

The respondent pays commissions to "organizers"<sup>4</sup> in 26 States and, in 1941, it spent \$2,708 for their traveling expenses outside of Illinois. During the same period it spent \$10,661 for advertising in newspapers, magazines, radio, and other media, as well as \$1,340 for printing, outside Illinois. It publishes and sells an official almanac at 50 cents per copy, throughout the United States. The semi-monthly meetings of its board of directors are reported in printing pamphlets of about 64 pages which are sent to the respondent's councils.

Alliance Printers and Publishers, Inc., herein called the Alliance, is an Illinois corporation having its place of business in Chicago. All its capital stock is held by the officers and directors of the respondent by virtue of their offices. The officers and directors of the Alliance are chosen from among those of the respondent. The board of directors of the respondent appoints the business manager. The Censor of the respondent, its ranking officer and representative appoints the editorial staff of the Alliance. The latter publishes the weekly *Zgoda*, official publication of the re-

<sup>4</sup> Their duties are to a large extent similar to those of insurance agents.

spondent, which is mailed to each member: 6,857,556 copies were published in 1941, about 80 percent of which were mailed to persons residing outside Illinois. It also publishes the daily Zgoda which appears for sale on newsstands in Illinois, Indiana, and Michigan. In 1941, 7,785,524 copies of the daily Zgoda were published, about 15 percent of which were mailed to persons residing outside Illinois. Both the weekly and daily Zgoda are members of the Audit Bureau of Circulations, and the latter is also a member [fol. 544] of the United Press. During 1941, the Alliance bought paper for printing these publications in the amount of \$59,474, all of which originally came from points outside Illinois. The Alliance also does all the respondent's job printing.

The respondent contends that it is not engaged in commerce within the meaning of the Act because it is a "fraternal benefit association having the lodge system and ritual, binding its members by fraternal ties, and animating them with the spirit of devotion to a free Poland," and because it is not inspired by "the profit motive." The respondent also points to the fact that, since its organization in 1880, it has expended large sums for "educational purposes," including the maintenance of Alliance College, Cambridge Springs, Pennsylvania, for "national purposes," for relief, and for other purposes, including the erection of monuments and help to Polish immigrants.

Although the respondent has been organized as a non-profit corporation and its charter emphasizes the cultural and social purposes of its incorporation, these factors are not conclusive of the question of our jurisdiction; the determining point is what the corporation does.<sup>5</sup> The activities of the respondent in issuing insurance benefit certificates and its attendant investments mark it as an insurance company.<sup>6</sup> We have previously held that a company en-

<sup>5</sup> *White v. Central Dispensary and Emergency Hospital*, 99 F. (2d) 355 (App. D. C.).

<sup>6</sup> This is recognized by the respondent in its "Manual" wherein it states:

• • • the Polish National Alliance in recent times has greatly expanded and developed into a large fraternal insurance organization • • • through its expansion it has entered the field of sharp competition of business institutions.



gaged in the insurance business, through similar extensive activities, is engaged in commerce within the meaning of the Act.<sup>7</sup> Moreover, the fact that the respondent may not be organized for "profit" does not place it beyond our jurisdiction.<sup>8</sup> We find that the respondent is engaged in commerce within the meaning of the Act.

[fol. 545] II. The Organization Involved

Office Employees' Union No. 20732 is a labor organization affiliated with the American Federation of Labor. It admits to membership office employees of the respondent's Chicago, Illinois, office.

• III. The Unfair Labor Practices

A. The Refusal to Bargain

1. The Appropriate Unit

The complaint, as amended, alleges that all Office employees of the respondent's Chicago, Illinois, office, excluding janitors, attorneys, elected officers, the manager of the real estate department, the inspector of the rent collection department, rent collectors, the chief organizer of the organization department, the personal secretary to the president, the personal secretary to the general secretary, the confidential secretary to the Censor (employed in Milwaukee, Wisconsin), the assistant secretary (administrative) to the general secretary, the assistant secretary (administrative) to the treasurer, and librarians, constitute a unit appropriate for the purposes of collective bargaining.

The respondent desires to exclude the following employees from the appropriate unit:

<sup>7</sup> *Matter of John Hancock Mutual Life Insurance Company and American Federation of Industrial and Ordinary Insurance Agents Union No. 21571*, 26 N. L. R. B. 1024.

<sup>8</sup> *N. L. R. B. v. Christian Board of Publications*, 113 F. (2d) 678 (C. C. A. 8); *Matter of American Medical Association and Chicago Mailers Union No. 2*, *International Typographical Union, etc.*, 39 N. L. R. B. 385.

*Henry Ziolkowski, I. Pawlowski, Walter Andrzejewski, W. Neuman, J. Hawrylewicz.* These employees are designated as "chief clerks" by the respondent and are in charge of separate departments. They allocate work to the other employees in their respective departments and perform clerical duties themselves. None of them has power to hire or discharge or to recommend such action. We are of the opinion that the nature of the duties performed by these employees does not require their exclusion from the unit, and we find them to be within the unit.

*E. Wnorowska.* She is secretary to the respondent's medical examiner and her duties require her to check applications, directing her superior's attention to those of [fol. 546] a questionable character. It appears that her position does not give her access to confidential information pertaining to labor relations. We shall therefore include her within the unit.

*J. Kowal and A. M. Skibinska.* These employees work under the direction of J. Hawrylewicz, the "chief clerk" in charge of the "Youth department." Their duties are essentially clerical, and neither directs the work of any other employees. We find them to be properly included within the appropriate unit.

*S. Kilar.* The duties of this employee are mainly clerical, requiring him to photostat and file applications and claims. We shall include him within the unit.

The respondent further urges that the following employees should be included within the unit:

*Office employees of the Alliance.* There are 16 such employees whose duties, although clerical, are not connected in any manner with the duties of the respondent's employees who constitute the alleged appropriate unit.

There is no showing of an interchange of employees between the respondent and the Alliance. The Alliance occupies a building approximately 1½ blocks distant from the respondent. Moreover, it is not shown that the Union has attempted to organize these employees. Under the circumstances, we find that the office employees of the Alliance are not a part of the appropriate unit.

*M. Janicki and M. Sakowska.* These employees are librarians who work in the basement of the respondent's building. They perform the usual functions of their calling and have no routine contact with the employees in the

unit alleged to be appropriate. We are of the opinion that the librarians should be excluded.

*F. Dziob.* As the personal secretary to the president of the respondent, Dziob receives calls, makes appointments, handles correspondence, and generally acts for the president in his absence. He has access to confidential information pertaining to labor relations, and we shall consequently exclude him from the unit.

*J. Fafara.* He is the chief "organizer" for the organization department and as such is in charge of the other [fol. 547] "organizers" in the field, whose duties are similar to those of an insurance agent. He spends a large portion of his time in traveling and giving lectures to the men in the field. He also supervises the payment of commissions to the employees of the organization department. His work is not that of an office employee and is sufficiently supervisory in nature to require his exclusion from the appropriate unit.

*P. Grzesiak.* As manager of the real estate department, he is in charge of all the real estate sales for the respondent and supervises the work of the office employees in his department. He reports periodically to the respondent's board of directors on the status of his work. Like Fafara, his duties are essentially different from those of the ordinary office employee and his work is primarily supervisory; we shall exclude him from the unit.

*C. Kowalski.* He is the inspector of rent collections and works with Grzesiak in the real estate department. He directs the raising and lowering of rents, spending the greater portion of his time outside the office inspecting real estate and investigating complaints. Kowalski also is properly excluded from the appropriate unit.

*Rent collectors.* There are 11 rent collectors employed by the respondent. They spend almost their entire time outside the office collecting rents and they report to the office only for the purpose of having their collections checked by Kowalski. They are paid on a commission basis. We find that their work is unlike that of the other employees and requires their exclusion from the unit.

*J. Foszcz.* None of the parties objected to the inclusion of Foszcz within the unit. He is in charge of the auditing department and distributes the monthly reports received from the respondent's lodges to his subordinates for audit-

ing. He also determines which of the 14 employees in his department shall receive time-off and which are required to work overtime. He has been employed by the respondent for 15 years, and one of the respondent's counsel stated at the hearing that Foszcz occupied a supervisory status. In view of the nature of his duties, we are of the opinion that Foszcz is more closely allied with management than [fol. 548] with the employees within the unit and we shall, therefore, exclude him from the appropriate unit.

We find that all office employees of the respondent's Chicago, Illinois, office, excluding janitors, attorneys, elected officers, the chief clerk of the auditing department, the manager of the real estate department, the inspector of the rent collection department, rent collectors, the chief organizer of the organization department, the personal secretary to the president, the personal secretary to the general secretary, the confidential secretary to the Censor (employed in Milwaukee, Wisconsin), the assistant secretary (administrative) to the general secretary, the assistant secretary (administrative to the treasurer, and librarians, at all times material herein constituted and now constitute a unit appropriate for the purposes of collective bargaining, and that such unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining, and otherwise effectuates the policies of the Act.

## 2. Representation By the Union of a Majority in the Appropriate Unit

The respondent's March 26, 1941, pay roll contains the names of 111 employees in the unit found above to be appropriate. Application cards introduced in evidence and testimony which we believe, as did the Trial Examiner, show that between March 20 and 26, 1941, 60 employees within such unit signed applications for membership in the Union or expressly authorized the Union to represent them.\*

---

\* The respondent sought to show that Emile Panek, who designated the Union as her bargaining agent, subsequently revoked such designation. She signed a card on the afternoon of March 24 and gave it to employee Louis Rozen at that time. On the morning of March 25, she asked him to

[fol. 549] We find, as did the Trial Examiner, that on March 26, 1941, and at all times thereafter, the Union was the duly designated representative of a majority of the employees in the appropriate unit, and that, by virtue of Section 9 (a) of the Act, the Union was, and has been, the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

### 3. The Refusal to Bargain Prior to the Strike

On March 19, 1941, a number of the respondent's office employees visited the headquarters of the Union, where they learned that they were eligible for membership; on March 22, they began an intensive membership drive. On March 23, they held a meeting, elected officers, and authorized representatives of the Union to get in touch with the respondent's management in order to "consummate some kind of an agreement." As found above, by March 26, 60 employees of the respondent had designated the Union as their collective bargaining representative.

Pursuant to authorization, James Algozino and Ackerman, union representatives, on March 26, 1942, called on

destroy it, and he informed her that he could not do so since he no longer had the card. Panek testified that on the same day she wrote a note to Andrzejewski, the leading union organizer in the respondent's office, asking that her card be destroyed. However, on March 29, 1941, she signed a protest, hereinafter discussed, from the Union to the Censor of the respondent, and, if her testimony be accepted, such action negatives her earlier expression of desire to withdraw from the Union. Andrzejewski testified that 2 months after the Union was organized, Panek wrote him stating that she wished to withdraw, that he thereupon explained to her that she had "the right to belong," and that thereafter Panek attended a union meeting. At best, Panek's actions were equivocal, and in the absence of a clear manifestation of a contrary intention, we find that she remained a member of the Union. See *Matter of Crown Can Company and American Federation of Labor*, N. L. R. B., No. —. In any event, even if the withdrawal of Panek were considered effective, the Union would nevertheless still have had a majority at all times herein material.



Charles Rozmarek, president of the respondent, and Casimir Midowicz, its counsel, at the respondent's office. Ackerman advised the respondent's representatives that the Union represented a majority of the office employees of the respondent and requested recognition. According to Algozino's uncontradicted testimony, Rozmarek replied that, if the Union represented any employees, "it was a small group of dissatisfied, disgruntled drones." He refused to agree to a consent election to determine the question, and stated that the respondent was not subject to the jurisdiction of the Board.

[fol. 550] Early in April 1941, the Union submitted a proposed contract to the respondent; in August it submitted a second proposed contract. Charles Noble, a union representative, testified without contradiction that "Nothing was ever done. At one time in our negotiations, we agreed to tear up any contract we had submitted and sit down across the table and work out something that would be mutually agreeable to the employer and the Union, but that was refused."

On August 30, 1941, the Union wrote F. X. Swietlik, of Milwaukee, Wisconsin, the Censor of the respondent and its ranking officer and representative, whose position carries with it the power to veto actions of the board of directors. The letter stated that, because of the failure of the respondent to bargain collectively with the Union, the latter's only alternative was a resort to its economic strength. It suggested that the Censor meet with a union committee in an endeavor to avoid a strike. On September 4, the Censor replied that the respondent "must be differentiated from a corporation conducted for profit," and stated that he was "unable to perceive any benefit to be gained from a conference."

Noble further testified, without contradiction, as follows: On September 26, 1941, Noble and the grievance committee of the Chicago Federation of Labor called on Rozmarek. They asked that the Union be recognized and that the respondent bargain collectively with it. Rozmarek refused the request but asked that a strike be averted until after the December 10 meeting of the supervisory council of the respondent. He assured them that "everything would remain [in] status quo in the office" until such time.

The respondent admits in its answer,<sup>10</sup> and we find, as did the Trial Examiner, that on March 26, 1941, and at all times thereafter, the respondent refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

[fol. 551] B. Interference, Restraint, and Coercion

After the Union made its existence known to the respondent on March 26, 1941, the latter not only refused to bargain collectively but set out on an intensive campaign to undermine the Union.

Employee Stanley Spila testified without contradiction, and we find, as did the Trial Examiner, that on March 26, 1941, J. Zwarycz, a director of the respondent, asked Spila whether he was a union member and what he thought about the Union, adding that he did so at the request of Rozmarek, president of the respondent. Spila told Zwarycz that he had joined the Union so as to "protect myself against some of the people collecting graft in the office."

Employee Andrzejewski testified without contradiction that during the last week of March 1941, M. L. Czyz, a vice president of the respondent, told him that she could never "consider" a union of employees of the respondent and that he was foolish to have become involved "in this kind of trouble." She thereafter frequently repeated substantially the same statements to Andrzejewski. Czyz was not called as a witness. We find, as did the Trial Examiner, that Czyz made the statements which Andrzejewski attributed to her.

Andrzejewski also testified that, on March 29, John Ulatowski, president of the council of the respondent of which Andrzejewski was a member, told him that President Rozmarek had authorized him to advise Andrzejewski that if

<sup>10</sup> The complaint alleges and the respondent's answer admits that on March 26, 1941, and at all times thereafter, the respondent refused, upon request, to bargain collectively with the Union. The respondent averred that it is "not engaged in interstate commerce and therefore not subject to the jurisdiction" of the Board "or the provisions" of the Act.

the latter gave up his union activities he would receive \$15 more per month, of which \$10 would be paid to Kostecki, assistant to the general secretary, for the campaign fund being raised for the reelection of the respondent's officers, leaving him \$5 "ahead." Andrzejewski testified that he rejected the proposal. Ulatowski, while admitting that he often talked with Andrzejewski, denied this particular conversation, stating that he had never talked about the Union with Andrzejewski or Rozmarek. Ulatowski admitted that he supported Rozmarek at the 1939 convention, at which the latter was elected president of the respondent, and that his daughter, who became an employee of the [fol. 552] respondent shortly thereafter and was working at the Chicago office at the time of the hearing, told Ulatowski of the formation of the Union. Rozmarek denied asking Ulatowski to make the proposal to Andrzejewski. In view of the fact that Rozmarek asked Zwarycz to inquire of Spila respecting his union membership, and in view of Ulatowski's unconvincing protestation that he never talked about the Union to either Andrzejewski or Rozmarek, we find, as did the Trial Examiner, that Ulatowski made the proposal to Andrzejewski, at the instance of Rozmarek.

On March 29, 1941, 45 union adherents addressed a letter to the Censor explaining that they had joined the Union in protest against "orders to return regularly 5% of our modest \* \* \* earnings" toward a campaign fund for the reelection of the respondent's officers. On May 14, 1941, the Censor replied, stating, among other things, that he considered their action improper, "inasmuch as your grievances should have been presented to the administrative authorities of our organization."

Andrzejewski testified, without contradiction, and we find, as did the Trial Examiner, that early in April 1941 G. Piwowarczyk, a director of the respondent, told him that he was foolish to have become involved with the Union, that the respondent's board of directors would never recognize it, and that there was no place for a union in an organization such as the respondent.<sup>11</sup> Andrzejewski testi-

---

<sup>11</sup> The same contention was made by counsel for the respondent during the course of oral argument before the Board and in its brief.

field that Piwowarczyk repeated these remarks to him many times thereafter, adding on one occasion that Rozmarek was prepared to "fight the case through all of the courts," that the Union was a "dead issue," and that Andrzejewski would be wise if he stopped his union activities.

Andrzejewski further testified that on April 18, 1941, M. W. Majchrowicz, J. Wattras, and J. Rekucki, directors of the respondent, told employee Rozen and himself that the Union "is out of the question" and that the respondent would never recognize a union because, while a union might be appropriate in a factory, it had no place in an office. None of these directors testified, and we credit the testimony of Andrzejewski, as did the Trial Examiner.

[fol. 553] Employee Rozen testified, without contradiction, and we find, as did the Trial Examiner, that in the respondent's office in April 1941 he heard Piwowarczyk warn employees S. Gadecki and I. Cieslak, "Do not join the union."

It is undenied, and we find that during April, May, and June, 1941, Killoren, supervisor of the female office employees and confidential secretary to the general secretary, asked employee Anna Owsiak, whose discharge is discussed below, whether she was a member of the Union; told a number of women employees, including Owsiak, that they were foolish for joining the Union and that the respondent would never allow a union in its office; told Owsiak and other employees that, if the Union ever established itself, the respondent would hire an efficiency expert and have most of the employees discharged; told employee Spila that he had been foolish to join the Union and bring outsiders "to our organization to tell us what to do"; inquired of employee F. Ziemiński if he was a union member; told employee Elizabeth Kloss that she held Kloss "above those who joined the Union," and, upon learning from Kloss that the latter was a member of the Union; told her that she was unfair to those who were paying her; told employee Victoria Zajackowska that the Union would do her no good, that Killoren's sister had joined a union and achieved no salary increase as a consequence, that once a union came in, the employees would receive no vacations but would be penalized for lateness and would receive no pay when ill; and at another time, after first inquiring as to Zajackowska's union status, told her that she knew Zajackowska was a member of the Union.. We also find

that because of Killoren's supervisory status, as well as her confidential position, the employees had just cause to believe that she represented the respondent, and the respondent is accordingly responsible for her statements set forth above.<sup>12</sup>

The following incidents related by witnesses for the Board are also undenied and are found to have occurred [fol. 554] as testified to by such witnesses: Between April 15 and 20, 1941, Kostecki, assistant to the general secretary, inquired of employee Kilar whether he had signed a union application and, upon receiving an affirmative reply, shook his finger at Kilar and said, "You will be sorry for that." About April 16, 1941, Buczak, president of employee Joseph Gajda's council, called Gajda to his home, told Gajda that he had been informed in the office of the respondent's secretary that Gajda was "on the blacklist for union activities and being secretary of the union." Gajda admitted that he was an officer of the Union, and Buczak thereupon told him, "Go to the secretary's office . . . and talk to them, tell them you are off all union business . . . be better for you and your job will be safe," adding, "Don't forget there never will be a union at the Polish National Alliance, that the board of directors and the board will never agree to a union in the home office." Early in June, 1941, Buczak, after again calling at the office of the respondent, told Gajda at his home the same evening that the treasurer of the respondent desired that Gajda "Talk to the other boys about settling this case with the officials of the Polish National Alliance outside the union, without organizers or anybody, just pick out your own committee . . .," adding that Tomaskiewicz, the treasurer, would arbitrate the matter between the employees and the board of directors. During May 1941 A. Wojcik, a director, told employee Joseph Lopatowski that she heard that the employees were organizing a union, that they were doing a foolish thing, that the respondent would never recognize the Union, and that "we have enough trouble as it is" on

<sup>12</sup> See *Matter of Germain Seed and Plant Company and International Brotherhood of Teamsters, etc.*, 37 N. L. R. B. 1090; *Matter of Central Greyhound Lines, Inc., of New York and Brotherhood of Railroad Trainmen*, 27 N. L. R. B. 976; *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72.



account of a union at the daily Zgoda, adding that the respondent "wanted nobody to come here and tell us what to do or whom to hire." Wojcik also told Lopatowski that he should go to Szczerbowski, the general secretary, and tell the latter that he was "his man" and would "stick with him." During May or June 1941 Szczerbowski told employee Henry Ziolkowski that, though the employees of the respondent might try to organize a union, they would "never go through with it."

Foszcz, the chief clerk of the auditing department, according to numerous witnesses who credibly testified with- [fol. 555] out contradiction, also played an important role in the respondent's campaign against the Union. In May 1941 he told employee Kilar that he should not have joined the Union and that it could do nothing for him. About the same time he told employee John Wojcik that he thought Wojcik was foolish for joining the Union, that Wojcik was old enough to know better, that the union members did not know what they were doing, and that there would be no Union. On June 7 he told employee Lawrence Kargol that the Union would never "be accepted" and that Rozmarek would never sign a union contract. He also asked employee Anna Owsiak on numerous occasions whether she belonged to the Union, asked her to tell him of any employees in her department who were members, and, on August 25, 1941, in response to his questioning respecting a union meeting held on August 22, she informed him that she was a member. Foszcz was not called as a witness, and we find, as did the Trial Examiner, that he made the statements attributed to him:

According to Andrzejewski, Dr. A. Z. Sampolinski, medical director of the respondent, early in June 1941 told him that Rozmarek had authorized a \$65 monthly increase for Andrzejewski and the assurance of his job until the September 1943 convention, provided that he "dropped all union activities and induced the other employees to do likewise." Sampolinski further told Andrzejewski that Tomaskiewicz, treasurer, Szczerbowski, general secretary, and S. E. Basinski, a director of the respondent, were present in the president's office when Rozmarek outlined the proposal. Andrzejewski testified that he refused the offer. Rozmarek denied making "any such proposition." Sampolinski, Tomaskiewicz, and Basinski did not testify. Szczerbowski appeared as a witness for the respondent but did

not testify respecting the incident. We, like the Trial Examiner, find that Rozmarek made the proposal and authorized Sampolinski to transmit it to Andrzejewski.

On June 26, 1941, Rozmarek, according to Rozen, told Rozen that he was "a nice fellow \* \* \* I want you to be one of the boys," adding that he should forget about "that union trouble in the office" and that Andrzejewski, "the one that organized the union," would be the only [fol. 556] employee to be discharged. Rozmarek denied the conversation but stated that he told Rozen that Andrzejewski "ought to watch his work because right now he only performs fifteen per cent of the work, whereas the assistant does 85 per cent." In view of Rozmarek's wholly unconvincing testimony respecting his gratuitous and irrelevant reference to Andrzejewski's work, we find that Rozen's version of the conversation is in accord with the facts and that Rozmarek made the remarks attributed to him by Rozen.

Employee Gajda testified, without contradiction, and we find, that during the latter part of September 1941 Killoren asked him how the Union was "getting along." Gajda replied, "The boys come in very often to see Mr. Rozmarek trying to settle peacefully \* \* \* but so far nothing doing. \* \* \*". Killoren then said, "Joe, I don't think anything will come out of it and besides \* \* \* don't you think that the union officials could be bought off and work hand in hand \* \* \* with the P. N. A. officials and still it won't do you any good to belong to the union?" Gajda answered, "Not in this case."

We find, as did the Trial Examiner, that by its course of conduct in warning its employees against union membership and activity, in interrogating them respecting their membership in the Union, in disparaging the Union, and in offering wage increases to employee Andrzejewski on condition that he cease his union membership and activities, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

### C. The Discriminatory Discharge of Anna Owsiak

Anna Owsiak began work for the respondent in November 1940 and joined the Union on June 20, 1941. Owsiak testified, without contradiction, and we find, that Szczerbowski, the general secretary, and Foszcz, the supervisor

of the auditing department, frequently complimented her upon the quality and speed of her work and upon her ability to get along with the other employees. In June, prior to her membership in the Union, she received an increase in salary.

[fol. 557] As hereinabove found, Killoren and Foszcz frequently asked Owsiak whether she belonged to the Union. In addition, she testified that on August 25, 1941, the following incident occurred: Foszcz inquired of her whether she had attended a union meeting on August 22. She told him that she had, adding, "You should have been there. You might have learned something." Foszcz replied, "I don't think so \* \* \* Do you think it is fair to your employers to join a union?" Owsiak thereupon said, "Mr. Foszcz, if the circumstances and if the situation here in the office would be satisfactory \* \* \* none of the workers would even dream of having a union. Foszcz did not testify, and we credit Owsiak's testimony, as did the Trial Examiner.

On September 9, 1941, Owsiak suffered an appendicitis attack and received permission from Kostecki to go home. After first telephoning Killoren, she went to a hospital and on September 11 underwent an appendectomy. She left the hospital 10 days later and, on October 4, with the permission of her doctor to return to work, informed Kostecki that she would be back on October 6. Owsiak testified, without contradiction, and we find, that Kostecki told her to wait in the general secretary's office "before going to any kind of work." When she arrived at the respondent's office on the morning of October 6, Szczerbowski told her, according to her testimony, that the respondent had determined to "let her go" because of lack of work, that she might be called back in a month or two, but that she should look for a job and if she found one to take it. Szczerbowski stated on direct examination that he told her "to wait a few days, maybe a few weeks, she was sick after operation," but that her position would be kept open for her. On cross-examination, however, he stated that he told her that there was no work for her. The record shows that at least one employee, hired after Owsiak, was doing the same or similar work at this time. We credit Owsiak's testimony, as did the Trial Examiner.

The respondent, in its answer, denies that Owsiak was discharged because of her union membership or activity, and states that she "was offered re-employment upon the understanding that she would not absent herself as frequently as she had done from her duties . . . but that Owsiak refused the offer. The evidence reveals no such offer or refusal. Szczerbowski admitted that he did not mention her alleged absence when he talked to her on October 6. However, later that day, when Noble and Algozino, union representatives, requested Rozmarek, Szczerbowski, Tomaskiewicz, and Midowicz to reinstate Owsiak, Szczerbowski gave them a list of her "absences," including alleged absences during August 1941. Owsiak testified that she had never been criticized for her absences. At the hearing the respondent admitted that she had not been absent during August. Her other absences were almost entirely on account of illness or with the respondent's permission; all were admittedly "excused" by the respondent.

In the course of the discussion between the union representatives and the respondent, further considered below, Noble indicated that a strike might result if the respondent did not reinstate Owsiak. Noble testified that Rozmarek told Szczerbowski to rehire her and to inform her that she was to report for work, and that Rozmarek promised Noble that she would be notified to that effect prior to a union meeting scheduled to be held that evening. Rozmarek testified that he told Noble, "have her report to work." We credit, as did the Trial Examiner, Noble's version of the conversation. Owsiak was not called by Rozmarek or anyone else on behalf of the respondent on October 6, as promised; nor was she thereafter reinstated.

We find that the respondent did not discharge Owsiak because of her "absences" or for any reason other than her membership in and outspoken support of the Union, as demonstrated by her remarks to Foszcz, and that her discharge was another phase of the respondent's intensive campaign of disruption of the Union. We find that, by discharging Owsiak, the respondent has discriminated in regard to her hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

[fol. 559] D. The Strike; Continuing Interference, Restraint, and Coercion; Further Refusals to Bargain.

During the October 6, 1941, meeting between the union representatives and the officers of the respondent, at which the Union demanded reinstatement of Owskiak, Noble reminded Rozmarek of his promise, given 10 days earlier, that matters would remain in "status quo in the office."<sup>13</sup> Not only did Noble protest Owskiak's discharge, but he also protested what he asserted to be a demotion of employee Helen Lachajczyk a few days earlier and concerning which the Union had called a meeting for the same evening. He asked that both employees be reinstated to their former positions so as to prevent a strike. Rozmarek refused Lachajczyk's reinstatement on the advice of Midowicz, who stated that the respondent "would lose face" if she were reinstated. As related above, the respondent also failed to keep its promise to notify Owskiak that she was reinstated.

On the evening of October 6, the Union held its scheduled meeting. Noble reported the details of his conference with the respondent. After a general discussion respecting the respondent's continued refusal to bargain, its continuing campaign against the Union, including the discrimination against its members, the employees voted to strike.

On the morning of October 7, 1941, the members of 708 the Union went on strike. The respondent's office and the plant of the Alliance were picketed. As a result thereof, the daily *Zgoda* ceased publication for 5 days. The strike continued until January 27, 1942.

Employee Rozen testified without denial, and we find, that on October 10, 1941, Piwowarczyk, a director of the respondent, told Rozen that those who had joined the Union were wrong in doing so and that it would never be recognized by the respondent. He asked Rozen to get in touch with four other specified striking employees, and urged that all five return to work pursuant to arrangements made by Piwowarczyk. Rozen did not act on the proposal.

[fol. 560] On October 11, according to the undenied testimony of employee Zajackowska, Killoren, told her as she

<sup>13</sup> See Section 3 (b), *supra*.



stood on the picket line, "You shouldn't be out here, you should be inside."

On October 24, the respondent wrote to its lodges and councils an "explanation" of the strike. All employees of the respondent were members of a lodge; some were also members of a council. The letter read in part as follows:

We affirm once more, that no strike was had or exists in the P. N. A. offices and that our offices are functioning properly.

The Board of Directors does not prohibit any of its employees to belong to a union, however, it cannot permit that an insignificant minority of employees shall dictate to a prepondering majority of P. N. A. employees, to belong contrary to their will, to a union and to such a one as they shall order them to. The Board of Directors likewise cannot allow persons, who have nothing in common with P.N.A. or Polish traditions to decide who and for what work a person shall qualify for in the offices of P. N. A.

We wish to emphasize, that the employees presently complaining in the councils and lodges never turned to the individual officers or to the Board of Directors with their grievances or demands as they should have done in the first instance before they sought the protection of strangers, and whom later they sent in their name to the Board of Directors with unfounded demands.

Fairness impels us to state, that among those who are not returning to work, at least half are good workers, however misguided or terrorised by ambitious individuals, who in this way seek to exert revenge on the present officers, because they were defeated at the last Convention. It is proper to mention that the leader of [fol. 561] dissatisfied employees was one of the candidates at the last convention for the office of Secretary General of the P. N. A.

Employee John Wojcik testified, without contradiction, that near the end of October, A. Wojcik, one of the re-

spondent's directors, told him and another striking employee that they were losing both their time and their jobs, that there would be no union in the respondent's office, and that if they wished he would arrange with Rozmarek to have them restored to their former status, but that if they refused they would go back as new employees, if at all.

Rozen testified that on November 9, Kostecki told him and several other striking employees that they were foolish for joining the Union, that the respondent would never recognize it, and that the strike was lost, and asked them to go back to work, stating that all the strikers would not be taken back by the respondent. Kostecki did not testify, and we find the testimony of Rozen to be true.

Stanley Spila, one of the striking employees, testified that in November and December 1941, Director Zwarycz told him that the respondent would not recognize the Union, that Spila ought to return to work, and that, if he desired, Zwarycz would take him to Rozmarek for reinstatement. Zwarycz did not testify, and we credit Spila's testimony.

On December 14, the weekly *Zgoda*, copies of which were mailed to every member of the respondent, carried an article concerning the strike over the signatures of the president, general secretary, and treasurer of the respondent. The article contained the following statements:

The Board of Directors does not prohibit any of its employees to belong to a union, but it cannot permit a small minority of employees to dictate to a predominant majority of such employees, against their own will to join the union to which they are ordered. The Board of Directors likewise cannot permit that persons who had nothing in common with the P. N. A. and the Polish traditions to decide who is qualified for work in the offices of the P. N. A.

[fol. 562] That the employees who quit their work were neither concerned with improvement of working conditions, nor compensation, is evidenced by the fact, that they themselves in the handbills distributed by them set forth that they have no other claims against the P. N. A., excepting only the establishment of a "closed shop" in the offices of the P. N. A. We know and understand that unions are necessary and beneficial in factories, mines and other private enterprises

organized for profit, but we do not see the necessity of establishing a union in the offices of a fraternal benefit society, which is organized for the mutual benefit of all, and in which all members, men and women, as well as the employees of the offices of the P. N. A., are co-owners of the assets of which we possess. Furthermore, the Board of Directors is of the opinion that the question of an eventual organization of the offices of the P. N. A. is a matter for the convention to pass upon as the Supreme Governing body of our Society.

Finally we desire to state that up to now no fraternal benefit society, whether American or Polish, has established a "closed shop" in their offices, and that on the average the employees in the offices of the P. N. A. received better wages than is the case with other like societies, which fact can be readily verified. In our opinion our society is not subject to the Wagner Act and the consideration of this matter by the National Labor Relations Board.

We, therefore, cannot permit unions to force upon us office help as was demanded of us under the contract submitted for our signatures, because the Board of Directors could not assume responsibility before the Convention and the whole membership of the Alliance of the proper conduct of the office and business of the Polish National Alliance.

During the first week of the strike the Union made several futile attempts to arrange, through Midowicz, a meeting with representatives of the respondent. On November 18, seven officials of the printing trades unions, an [fol. 563] organizer for the American Federation of Labor, and three officials of the Union called on Rozmarek at his office. The three representatives were informed by Rozmarek that he had nothing to discuss with them and that they were not permitted to enter his office.

In the article published in the weekly Zgoda on December 14, referred to above, there appeared the statement that the respondent's board of directors had adopted a resolution "that the groundless demands of some mislead [sic]

employees for establishment of a 'closed shop' in the offices of the P. N. A. be not considered, especially in view of the fact that the great majority of the office employees are not in agreement with those who quit their work."

#### **E. Conclusions With Respect to the Refusals to Bargain and the Strike**

We have found, upon facts which the respondent does not dispute, that at all times since March 26, 1941, the respondent has consistently refused to bargain with the Union, despite the latter's numerous and persistent efforts to obtain recognition. Nor was the respondent satisfied merely to ignore the Union's request to bargain; it set out on a course of conduct with the aid of its officers, directors, and supervisory employees, which had a single goal—the undermining of the Union strength. In striving to accomplish its purpose, the respondent, after denying the Union recognition, warned, urged, and discouraged its employees against union membership and activity; interrogated them respecting their membership in the Union; disparaged the Union; offered wage increases to Andrzejewski, one of the union leaders, provided that he would "drop" his union activity and "induce" the other employees to do likewise; and, finally, resorted to discharging Owsiak because of her membership in and support of the Union. As a result of these unlawful acts and the respondent's unwavering course of antiunion conduct, the members of the Union voted to strike and commenced picketing the respondent's offices. But the respondent's efforts to destroy the Union did not cease. It persisted in its refusal to bargain with the Union, continued to make [fol. 564] disparaging comments about the Union, and, by various devices, including the publication in its official organ of false and misleading statements concerning the causes and status of the strike, urged the strikers to return to their jobs. By such acts the respondent sought at once to impress upon the striking employees the futility of remaining members of the Union and to evade its duty to bargain collectively.

We find that, as a result of the respondent's refusal to bargain, its discriminatory discharge of Anna Owsiak, and its other and numerous acts of interference, restraint, and coercion, the employees of the respondent went on strike,

and that the respondent's persistence in such unlawful activities resulted in a prolongation of the strike.

## F. The Refusals to Reinstatement

### 1. Henry Ziolkowski

Ziolkowski was chief clerk of the respondent's mortuary department in Chicago and began work for the respondent in 1919. He joined the Union in March 1941 and went on strike with the other union members on October 7, 1941. The uncontraverted testimony shows that on October 8 he told another striker, "I have big obligations, I believe we better go back to work," and that on the evening of that day he conferred with General Secretary Szczerbowski at the latter's home. Szczerbowski gave Ziolkowski permission to return to work. On October 10 Ziolkowski reported for work and was informed by President Rozniarek that the matter of his return would have to be discussed by the board of directors. Szczerbowski then told Ziolkowski that before he could return he would have to fill out an application "as a new applicant for the work." Ziolkowski refused, telling Szczerbowski, "Mr. General Secretary, I am sorry but I believe I belong to this office and I work long enough and you have my reputation of record. If you cannot take me back again to work I won't sign any application." He was permitted to take his personal effects from his desk and thereupon left the office. Had Ziolkowski accepted the condition attached to the offer of reinstatement, he would [fol. 565] have lost certain vacation privileges which he enjoyed by virtue of his length of service. The respondent offered no explanation as to why it imposed the condition requiring Ziolkowski to apply "as a new applicant."

We find, as did the Trial Examiner, that Ziolkowski retained his status as an employee while on strike, that, since the strike was caused by the respondent's unfair labor practices, he was entitled, upon request, to unconditional reinstatement to his former position.<sup>14</sup> It is apparent, and we find, that the respondent attached the unfavorable condition to its offer of reinstatement in order to punish Ziolkowski for having joined the Union and the strike. We

<sup>14</sup> *N.L.R.B. v. American Mfg. Co.*, 106 F. (2d) 61 (C.C.A. 3); *N.L.R.B. v. Hopwood Retinning Co.*, 98 F. (2d) 97 (C.C.A. 2).



find further that the respondent thus discriminated against Ziolkowski in regard to the hire and tenure of his employment, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.

## 2. The Remaining Strikers

On January 27, 1942, S. G. Lippman, counsel for the Union, wrote Midowicz, counsel for the respondent, requesting that the respondent reinstate the strikers. On February 9 and 11, Noble made the same request, listing the 26 employees who sought reinstatement.<sup>15</sup> The respondent made no reply to these communications.

In its answer the respondent contends that it refused to reinstate the striking employees because there had been a "reorganization" of its office, whereby the strikers' positions had been eliminated or consolidated, and that consequently there "did not \* \* \* exist sufficient vacancies to accommodate all the strikers." This contention is not supported by credible evidence. The record abundantly establishes the fact that the work of the striking employees was being performed by employees transferred temporarily from other departments and by employees hired since the strike, both of which groups performed an unusual amount of overtime work.

[fol. 566] That the "reorganization" did not occur in the normal course of the respondent's operations but was brought about by the exigencies of the strike is shown by Rozmarek's undisputed testimony that he and his fellow officers had given the matter of reorganization considerable attention for 3 or 4 months before the strike "in order to be prepared for any emergency" and that on October 7, 1941, "we made transfers from one department to another in order to fill up the gaps." While the respondent introduced into evidence a document, prepared under the supervision of General Secretary Szczerbowski, purporting to show that all or most of the strikers' duties had been assumed by employees who did not strike on October 7, Szczerbowski admitted at the hearing that the persons at work during the strike performed a large and unusual amount of overtime work. Thus, the respondent's records show that from October 1, 1940, to December 31, 1940, its

<sup>15</sup> See Appendix A.

overtime payments amounted to \$124.42, while during the same period in 1941 the overtime payments increased to \$10,222.58. We find that the extraordinary increase in overtime work resulted from the strike. Moreover, it is proved that after the commencement of the strike on October 7, 1941, and even after the applications for reinstatement on January 27, 1942, the respondent hired persons not employed before the strike to occupy positions which the striking employees had held or for which they were qualified. When questioned at the hearing concerning his willingness to discharge the persons hired during the strike in order to permit the reinstatement of the strikers, Szezerbowski stated, "They perform their duties and I don't see any reason for discharging them." No other explanation was offered by the respondent as to why it did not dismiss such persons and reinstate the striking employees.

Since the strike was caused and prolonged by the respondent's unfair labor practices, the striking employees were, in the absence of a valid reason, entitled, upon request, to immediate reinstatement to their former positions, even though the respondent had hired new employees during the strike.<sup>16</sup> No valid reason for the failure to rein-[fol. 567] state them has been established by the record, and we find that the respondent has failed to satisfy us that it could not reinstate all or any of the striking employees. When the employees went on strike, they remained employees of the respondent, within the meaning of Section 2 (3) of the Act, for their work had ceased as a consequence of a current labor dispute and because of unfair labor practices. After they had applied for reinstatement, thereby indicating their willingness to return, the respondent was under a duty to restore them to the jobs which they had vacated, or to similar jobs, and it could not with impunity give preference to outsiders. The respondent deliberately sought to terminate the employee status of the strikers by favoring the non-strikers with employment in the jobs formerly occupied by the strikers, thereby displacing the latter who had engaged in concerted activity as a protest against the respondent's unfair labor practices. But for such unfair labor practices, they would not have been de-

<sup>16</sup> *Rapid Roller Co. v. N.L.R.B.*, 126 F. (2d) 452 (C.C.A. 7); *N.L.R.B. v. Acme Air Appliance Co.*, 117 F. (2d) 417 (C.C.A. 2).

prived of their employment. The object lesson to them and to the other employees was clear. Moreover, we find that by the respondent's unremitting campaign to destroy the Union both before and during the strike, by its conduct in requiring Ziolkowski to return to work as a new employee, by its refusal to reply to the Union's request to reinstate the striking employees, and by the admission of Szczerbowski and Rozmarek, the "reorganization" of its office and the attendant refusal to reinstate the striking employees were motivated by its desire to punish them for their concerted activity in striking as a protest against the respondent's unfair labor practices.

We find that, by refusing reinstatement to the striking employees at the time the Union unconditionally applied for their return to work on January 27, 1942, and thereafter, the respondent discriminated in regard to the hire and tenure of employment of said employees, thereby discouraging membership in the Union, and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act."

#### [fol. 568] IV. The Effect of the Unfair Labor Practices Upon Commerce

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The Remedy

Having found that the respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that the respondent has refused to bargain collectively with the Union. We shall therefore order it, upon request, to bargain collectively with the Union with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

We have found that the respondent has discriminated against the employees named in Appendix A. The re-

spondent contends that the strikers are not entitled to reinstatement because of alleged acts of violence committed by them during the strike. The acts complained of are shown to have been minor derelictions which the local authorities did not view seriously, for no arrests were made.<sup>17</sup> Since application for reinstatement was made on their behalf on January 27, 1942, it is not necessary for them to apply again. We shall, therefore, order the respondent to offer to all such employees immediate reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges. All the employees presently working for the respondent who have been hired since October 7, 1941, the date of the commencement of the strike, shall, if necessary, be dismissed [fol. 569] by the respondent to provide employment for those employees to be offered, and who shall accept, reinstatement. If thereupon, there is not sufficient employment immediately available for the employees who did not go on strike and for those to be offered, and who shall accept, reinstatement, then all positions shall be distributed by the respondent among employees presently working, excluding those dismissed, and the employees to be offered, and who shall accept reinstatement, in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation and activities, following such a system of seniority or other non-discriminatory procedure as has been heretofore applied by the respondent in the conduct of its business. Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed on a preferential list, with priority determined among them in accordance with such system of seniority or other non-discriminatory procedure as has been heretofore applied by the respondent in the conduct of its business, and, thereafter, in accordance with such list, employees shall be offered reinstatement by the respondent to their former or substantially equivalent positions as such employment becomes available and before other persons are hired for such work.

We shall further order the respondent to make whole the employees listed in Appendix A for any loss of pay they

<sup>17</sup> *Republic Steel Corp. v. N.L.R.B.*, 107 F. (2d) 472 (C.C.A. 3).

may have suffered by reason of the respondent's refusal on January 27, 1942, to reinstate them, by paying to each of them a sum of money equal to the amount each would normally have earned as wages from the date of the application for reinstatement to the date of the respondent's offer of reinstatement or placement upon the preferential list hereinabove described, less his net earnings<sup>18</sup> during said period.<sup>19</sup>

[fol. 570] We have found that the respondent has discriminated against Henry Ziolkowski because he had joined the strike. Since he applied for reinstatement on October 10, 1941, when the respondent refused to restore him to his former status, it is not necessary for him to repeat his application. We shall therefore order the respondent to offer him immediate reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, in the same manner as we have ordered the reinstatement of the 26 employees named in Appendix A. We do not believe, however, that the policies of the Act will be effectuated by ordering the respondent to make Ziolkowski whole as of the date of his application for

---

<sup>18</sup> By "net earnings" is meant earnings less expenses, such as for transportation, room and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for the unlawful discrimination against him and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440: Monies received from work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

<sup>19</sup> Our order directing the respondent thus to make the employees whole derives from our finding that the refusal to reinstate them on application constituted a violation of Section 8 (3) of the Act as well as from our finding that the employees went out on strike because of the respondent's unfair labor practices. See *Matter of Western Felt Workers and Textile Workers Organizing Committee*, 10 N. L. R. B. 407.



reinstatement, as he attempted to return to work while the strike was still in progress, thereby abandoning the concerted activity to which his fellow employees resorted in consequence of the respondent's unfair labor practices. To treat him in any different manner from the strikers who remained away from work in protest against the unfair labor practices would be plainly inequitable. We shall, therefore, regard the respondent's discriminatory refusal to reinstate Ziolkowski on October 10, 1941, as having the effect of returning him to the status of a striker, and we shall order the respondent to make him whole as of January 27, 1942, in the same manner as we have directed the respondent to make whole the employees listed in Appendix A.

We have found that the respondent discriminatorily discharged Anna Owsiak on October 6, 1941, and thereafter refused to reinstate her, because of her membership in and activities on behalf of the Union. We shall therefore order the respondent to offer her immediate and full reinstatement to her former or substantially equivalent position, [fol. 571] without prejudice to her seniority and other rights and privileges. We shall also order the respondent to make her whole for any loss of pay she may have suffered as a consequence of the discrimination, by paying to her a sum of money equal to the amount which she normally would have earned as wages from the date of her discharge to the date of the offer of reinstatement, less her net earnings during said period.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. Office Employees' Union No. 20732, A. F. of L., is a labor organization within the meaning of Section 2 (5) of the Act.

2. The office employees of the respondent's Chicago, Illinois, office, excluding janitors, attorneys, elected officers, the chief clerk of the auditing department, the manager of the real estate department, the inspector of the rent collection department, rent collectors, the chief organizer of the organization department, the personal secretary to the president, the personal secretary to the general secretary, the confidential secretary to the Censor (employed in Mil-

waukee, Wisconsin), the assistant secretary (administrative) to the general secretary, the assistant secretary (administrative) to the treasurer, and librarians, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Since March 26, 1941, Office Employees' Union No. 20732, A. F. of L., has been the exclusive representative of all such employees for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with Office Employees' Union No. 20732, A. F. of L., as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

[fol. 572] 5. By discriminating against the employees named in Appendix A and Anna Owsiak and Henry Ziolkowski in respect to their hire and tenure of employment, thereby discouraging membership in Office Employees' Union No. 20732, A. F. of L., the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

#### ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Polish National Alliance of the United States of North America, Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Office Employees' Union No. 20732, A. F. of L., as the exclusive repre-

representative of the office employees of the respondent's Chicago, Illinois, office, excluding janitors, attorneys, elected officers, the chief clerk of the auditing department, the manager of the real estate department, the inspector of the rent collection department, rent collectors, the chief organizer of the organization department, the personal secretary to the president, the personal secretary to the general secretary, the confidential secretary to the Censor (employed in Milwaukee, Wisconsin), the assistant secretary (administrative) to the general secretary, the assistant secretary (administrative) to the treasurer, and the librarians;

(b) Discouraging membership in Office Employees' Union No. 20732, A. F. of L., or any other labor organization of its employees, by discharging, refusing to reinstate, or in any other manner discriminating in regard to the hire and tenure of employment or any term or condition of employment of its employees;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act.

(a) Upon request, bargain collectively with Office Employees' Union No. 20732, A.F. of L., as the exclusive representative of its employees at the Chicago office, excluding janitors, attorneys, elected officers, the chief clerk of the auditing department, the manager of the real estate department, the inspector of the rent collection department, rent collectors, the chief organizer of the organization department, the personal secretary to the president, the personal secretary to the general secretary, the confidential secretary to the Censor (employed in Milwaukee, Wisconsin), the assistant secretary (administrative) to the general secretary, the assistant secretary (administrative) to the treasurer, and librarians, in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment;

(b) Offer to the employees listed in Appendix A, and to Anna Owsiak and Henry Ziolkowski, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing if necessary all employees hired since October 7, 1941, in the manner set forth in Section V above, and place those for whom employment is not immediately available upon a preferential list and offer them employment as it becomes available in the manner set forth in said section;

(c) Make whole, in the manner set forth in Section V above, the employees listed in Appendix A, and Anna [fol. 574] Owsiak and Henry Ziolkowski for any loss of pay they may have suffered as a result of the respondent's discrimination against them;

(d) Post immediately in conspicuous places throughout its Chicago, Illinois, office, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) hereof; (2) that the respondent will take the affirmative action set forth in paragraphs (2) (a), (b), and (c) hereof; and (3) that the respondent's employees are free to become or remain members of Office Employees' Union No. 20732, A. F. of L., and that the respondent will not discriminate against any of its employees because of their membership in or activities on behalf of that organization;

(e) Notify the Regional Director of the Thirteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

Signed at Washington, D. C. this 11 day of Aug. 1942.

Harry A. Millis, Chairman; Wm. M. Leiserson, Member, National Labor Relations Board. (Seal.)

Mr. Gerard D. Reilly, dissenting in part:

I dissent from that portion of the majority's decision denying back pay to Henry Ziolkowski from the date of his application for reinstatement, when the respondent discriminated against him because he had participated in the

strike. Ziolkowski, like the other employees, had resorted to the strike weapon to combat the respondent's unfair labor practices. When he offered to return to work, the respondent was under a duty to restore him unconditionally to his former employment. This the respondent failed to do; and Ziolkowski was privileged to reject the offer of reinstatement as discriminatory. The offer and its refusal were, therefore, tantamount to a discharge for union activity and participation in the strike, which clearly had the effect of discouraging such activity. The policies of the Act [fols. 575-577] can, therefore, best be effectuated by making Ziolkowski whole for the loss of pay he has suffered by reason of the discrimination against him and not by resort to fiction, in which the majority has indulged, that he reverted to the status of a striker. I see no distinction between this situation and those cases in which we have consistently held that unfair labor practice strikers are entitled to back pay from the date on which unconditional reinstatement is denied them.

I do not believe that the fact that Ziolkowski chose to return to work before the strikers as a group had so decided is an operative factor in a formulation of the affirmative relief to be ordered. The policy of the Act would, in my opinion, be best served by encouraging those who have gone out on strike because of their employer's unfair labor practices to return to work and to avail themselves of the administrative remedy which the Act affords them and we should do nothing to deter any individual striker from such action. The effect of the majority's decision would, it seems to me, be to prolong unfair labor practice strikes and to discourage employees from recourse to the adequate relief available to them under the Act.

Signed at Washington, D. C., this 11 day of Aug. 1942.

Gerald D. Reilly, Member, National Labor Relations Board.

• • • • •



[fol. 578] IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

8090

POLISH NATIONAL ALLIANCE OF THE UNITED STATES OF NORTH  
AMERICA, a Corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent.

PETITION FOR REVIEW AND TO SET ASIDE AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD—Filed August 21, 1942

*To the Honorable, the Judges of the United States Circuit  
Court of Appeals, for the Seventh Circuit:*

Polish National Alliance of the United States of North America, a Corporation, petitioner, respectfully petitions this Honorable Court for Review of a certain order entered August 11, 1942, by the National Labor Relations Board (hereinafter called the "Board") in a proceeding on a complaint instituted by the Board against petitioner, which proceeding is designated upon the records of the Board as:

"Case No. C-2176

In the Matter of POLISH NATIONAL ALLIANCE OF THE UNITED  
STATES OF NORTH AMERICA

and

OFFICE EMPLOYEES' UNION No. 20732 A. F. of L."

Petitioner shows:—

1 (a): Petitioner is a not for profit Corporation, duly organized under the laws of the State of Illinois, with its principal office at 1520 West Division Street, Chicago, Illinois. That petitioner is transacting business in Chicago, Illinois.

(b) In the complaint issued and the order entered by the Board in said proceeding, it was alleged and found petitioner engaged in unfair labor practices affecting commerce within the meaning of the National Labor Relations Board Act.

(c) This Court has jurisdiction herein by virtue of Section 10 (f) of the National Labor Relations Board Act, 49 Stat. 449 U. S. C. A. Section 160 (f).

2. On the third amended charge filed March 9, 1942 by Office Employees' Union No. 20732 A. F. of L. herein called the "Union," the Board issued its complaint dated March 9, 1942 against petitioner alleging that it had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3) and (5), and Section 2 (6) and (7) of the National Labor Relations Board Act, 49 Stat. 449 herein called the "Act". The said proceeding was numbered and known as X III-6-1692.

3. Answer was filed by petitioner.

4. Hearing was held in Chicago, Illinois, before Mr. Josef L. Hektoen, Trial Examiner.

5. An intermediate report dated April 28, 1942 was filed by the said Trial Examiner in which the Trial Examiner made a number of Findings of Fact and Conclusions of Law and made certain recommendations which for the most part were approved by the Board after Exceptions had been filed by petitioner and oral argument had.

6. (a) On August 11, 1942 the Board entered its Decision and Order. The Board found, among other things, that petitioner was engaged in Interstate Commerce within the meaning of the Act, and that although petitioner might not be organized for profit, yet this fact did not place it beyond the jurisdiction of the Board.

[fols. 580-582] (g) The Board found that the activities of petitioner in connection with its operations had a close, intimate and substantial relation to trade, traffic and commerce among the several States and tended to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

[fol. 583] 8. Petitioner prays that the Order of the Board may be set aside and the complaint in said proceeding dismissed.

In the alternative, it prays that such findings of fact and conclusions of law made by the Board as the basis for its said Order, and such portions of the Order as are founded thereon, which this Honorable Court shall find to be unsupported by substantial evidence or by the law, may be set aside and the Order of the Board modified accordingly.

That the Board may be required to certify and file, in this Court, a transcript of the entire record of the proceedings before it.

That petitioner may have such other and further relief as this Honorable Court shall direct.

Polish National Alliance of the United States of North America, a Corporation, by Charles Rozmarek, President.

[fol. 584] POINTS TO BE RELIED UPON BY PETITIONER IN SUPPORT OF ITS PETITION

1. The National Labor Relations Board (hereinafter called the "Board") erred in entering its said Order dated August 11, 1942.

2. The Board erred in overruling the Exceptions filed by petitioner (respondent therein) to the Intermediate Report, and in refusing to dismiss the Complaint upon which such Order was entered.

3. The Board's finding, under Section 1 of the Decision and Order, that petitioner is engaged in commerce within the meaning of the Act, is contrary to the evidence and to the law.

[fol. 585] 11. The finding under Section IV of the Order that the alleged activities of petitioner set forth in Section HI occurred in connection with the operations of petitioner set forth in Section I of the Order, have a close, intimate [fol. 586] and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and a free flow of commerce, is not based upon substantial evidence and is contrary to the law.

12. The remedy and each item thereof set forth under Section V of the Order and the findings therein, are not

based upon substantial evidence and are contrary to the law and beyond the power of the Board to make upon the record in this case.

13. The conclusions of law numbered two (2) to seven (7) inclusive, made by the Board upon the basis of the alleged facts set forth in its Order are not warranted by the law in this case and are not based upon substantial evidence and are contrary to the law.

14. The Order and each and every provision thereof requiring petitioner to cease and desist from certain things and to take certain affirmative action, is erroneous and not based upon substantial evidence in that regard and is contrary to the law.

---

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT

(Caption No. 8090)

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD AND  
REQUEST FOR ENFORCEMENT

*To the Honorable the Judges of the United States Circuit  
Court of Appeals for the Seventh Circuit:*

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*), files this answer to the petition [fols. 587-591] to review and set aside filed herein and this request for enforcement of the Board's order.

(1) The Board admits the allegations contained in Section 1 of said petition.

(2) Answering the allegations contained in Sections 2 to 7, inclusive, of said petition, the Board prays reference to the certified transcript of the entire record of the proceedings before the Board filed herein for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter before the Board.

Wherefore, having answered each and every allegation contained in the petition to review, the Board requests this

Honorable Court to deny said petition insofar as it requests that the order of the Board be set aside.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the National Labor Relations Act, respectfully requests this Honorable Court for the enforcement of its said order against petitioner dated August 11, 1942, in Case No. C-2176, entitled "*In the Matter of Polish National Alliance of the United States of North America and Office Employees' Union No. 20732, A. F. L.*"

[fol. 592] IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

(Caption No. 8090)

REPLY TO REQUEST FOR ENFORCEMENT CONTAINED IN THE ANSWER OF NATIONAL LABOR RELATIONS BOARD—Filed October 23, 1942

*To The Honorable Judges of the United States Circuit Court of Appeals, For the Seventh Circuit.*

*A*

Petitioner, Polish National Alliance of the United States of North America, admits that it is an Illinois Corporation with its principal office and place of business at Chicago, and denies that it was there guilty of unfair labor practices, or at any other place.

*B*

It admits the entry of the Order by the National Labor Relations Board as set out in the Request for Enforcement contained in the Answer filed by the Board herein.

*C*

It admits receipt of Notice of such Order.

*D*

It admits that a transcript has been filed herein.



*E*

Petitioner, Polish National Alliance of the United States of North America denies that the Board is entitled to an enforcement of said Order and it makes, as part of its Reply to the Request for Enforcement, the petition heretofore filed by it herein for a Review and setting aside of said Order.

Wherefore the petitioner, Polish National Alliance of the United States of North America, prays this Honorable [fols. 593-603] Court that the Request for Enforcement filed herein by National Labor Relations Board, be denied.

[fol. 604] At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the sixth day of October, in the year of our Lord one thousand nine hundred and forty-two, and of our Independence, the one hundred and sixty-seventh.

8090

POLISH NATIONAL ALLIANCE OF THE UNITED STATES OF NORTH AMERICA, a Corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition for Review of an Order of the National Labor Relations Board

And, to-wit: On the twenty-first day of August, 1942, there was filed in the office of the Clerk of this Court, an appearance of counsel for petitioner; which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT

Cause No. 8090

Polish National Alliance of the United States of North America, a Corporation, Petitioner,

vs.

National Labor Relations Board, Respondent

The Clerk will enter my appearance as counsel for Petitioner.

Casimir E. Midiwicz, Ewart Harris, 139 No. Clark Street, Chicago, Illinois.

Endorsed: Filed August 21, 1942. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the fifth day of December, 1942, there was filed in the office of the Clerk of this Court the Appendix to Petitioner's Brief, which said appendix is not copies here as the same is certified herewith under a separate certificate.

[fol. 605]

8090

POLISH NATIONAL ALLIANCE OF THE UNITED STATES OF NORTH  
AMERICA, a Corporation, Petitioner,

VS.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition for Review of an Order of the National Labor  
Relations Board

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Ewart Harris, counsel for petitioner, and by Mr. Lester Asher, counsel for Respondent, and the Court takes this matter under advisement.

And afterwards, to-wit: On the fifth day of June, 1943, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

[fol. 606] IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1942, APRIL  
SESSION, 1943

No. 8090

POLISH NATIONAL ALLIANCE OF THE UNITED STATES OF  
AMERICA, a Corporation, Petitioner,

VS.

NATIONNAL LABOR RELATIONS BOARD, Respondent

June 5, 1943

Before Evans, Sparks and Major, Circuit Judges

MAJOR, Circuit Judge:

This case is here upon petition of the Polish National Alliance to review and set aside an order issued by the National Labor Relations Board, pursuant to Sec. 10 (c) of the National Labor Relations Act (29 U. S. C. A. Sec. 151, *et seq.*) The Board in its answer requested enforcement of its order.

The order is based upon findings that petitioner violated Sec. 8 (1), (3) and (5) of the Act by its refusal to bargain

collectively with Office Employees' Union No. 20732, A. F. of L. (hereinafter called the Union), by its discriminatory discharge of Anna Owsiak, by its discriminatory refusal to reinstate, upon application, a group of twenty-seven employees who had engaged in a strike caused and prolonged by petitioner's unfair labor practices, and by its anti-union conduct and statements. The Board, upon such findings, [fol. 607] entered its order containing the usual cease and desist provisions and affirmative requirements.

The contested issues may be classified generally as (1) whether the Board has jurisdiction of petitioner, or, more accurately perhaps, whether petitioner is subject to the Act, and (2) whether the Board's findings as to the unfair labor practices are supported by substantial evidence.

The jurisdictional provision of the Act is Sec. 10 (a), which provides: "The Board is empowered as hereinafter provided, to prevent any person from engaging in any unfair labor practice affecting commerce."

The critical words, fixing the limits of the Board's authority in dealing with labor practices, are "affecting commerce." The Act specifically defines the "commerce" to which it refers (Sec. 2 (6)): "The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several states \* \* \*." The Act also defines the term "affecting commerce" (Sec. 2 (7)): "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tendency to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

In *National Labor Relations Board v. Jones and Laughlin*, 301 U. S. 1, wherein the question of the Board's jurisdiction was considered at length, the court on page 32 stated:

"Whether or not particular action does affect commerce in such a close and intimate fashion as to be subject to federal control, and hence to lie within the authority conferred upon the Board, is left by the statute to be determined as individual cases arise. We are thus to inquire whether in the instant case the constitutional boundary has been passed."

It therefore appears pertinent, in considering the question before us, to make a rather detailed statement of peti-

tioner's activities. Petitioner is a fraternal benefit society, organized under the laws of the State of Illinois as a not-for-profit corporation. It is carried on for the benefit of its members, most of whom are certificate holders and their beneficiaries. It has a lodge system with ritualistic form of work and a representative form of government. Its purpose, as stated in its charter, is "to promote the cultural, social and economic advancement of its members, to foster fraternalism and patriotism among them, to provide death, disability, accident and other benefits to its members and their beneficiaries." Its membership, the creation, maintenance and disbursement of funds, and its activities generally, are performed in accordance with its by-laws and the laws of the State of its creation. Its supervising officials are elected at regular conventions, and constitute its supreme governing body. The convention is made up of delegates selected from local lodges. As its name indicates, only persons of Polish descent are eligible for membership. The preamble to its constitution recites the hardships and sacrifices which have been endured by the people of Poland as the reasons why many of them sought refuge in this country. The general purpose in founding the Polish National Alliance was to insure such Polish people of a more perfect union in this country and a proper moral, intellectual, economic and social development, and to secure by all legitimate means the restoration and preservation of the independence of the Polish territories in Europe.

Petitioner is organized into 1,817 lodges and is licensed to do business in twenty-six states, the District of Columbia, and Manitoba, Canada. Lodges are grouped into 190 councils, 160 of which are outside of the State of Illinois. On December 31, 1941, petitioner had in force 272,897 insurance benefit certificates with a total face value of \$159,683,583. Such certificates afford every form of protection ordinarily furnished by life insurance companies and include: (1) ordinary life, (2) 20-year payment life, (3) 20-year endowment, (4) endowment at age of 65, and (5) combined term and paid up at age of 65. Petitioner's manual states: "The premium rates on all certificates of insurance, and also the reserves, are computed on the basis of the American Experience Table of Mortality with interest at the rate of three per cent (3%) per annum, according to the Illinois standard basis. These assumptions are the



most conservative used by American life insurance firms." Net earnings are distributed as dividends to members in accordance with the varying provisions of the certificates they hold; the certificates have a cash value which may be withdrawn by the member or utilized as security for a loan. Premiums collected, in excess of benefits paid out, become a part of petitioner's investments. It owned on December 31, 1941, assets of \$30,090,835, represented by a variety of [fol. 609] properties and securities. Investments in railroads totaled \$1,500,000, bond holdings in public utilities and large scale industry operating in all sections of the country amounted to almost \$3,000,000, extensive real estate holdings in five states were valued at \$11,000,000, and holdings in securities of the United States, of state governments, and of nationally distributed political subdivisions totaled more than \$8,000,000. During 1941, its total income was \$5,717,344, of which \$3,723,364 was received from members and \$1,690,250 from investments. During this same year, benefits paid totaled \$1,845,126.

Petitioner's business is managed by officers and directors from its Chicago office. As presently constituted, a person who becomes a member must also become a certificate holder. All terms and conditions of the benefit certificates are determined, investments made, applications for certificates, claims, and loans acted upon, and all benefit certificates and checks issued at the home office in Chicago. Its securities are purchased through licensed dealers, and with the exception of \$11,000 on deposit with authorities in Manitoba, Canada, are kept in Chicago.

Sub-standard risks are reinsured through Lincoln National Life Insurance Company, and reinsurance documents are sent to that company's home office in Fort Wayne, Indiana. More than \$250,000 of such insurance was in effect at the time of the hearing. The Credit Company of Atlanta, Georgia, rendered inspection reports concerning the financial standing and character of applicants for benefit certificates. Petitioner employs organizers in twenty-six states to obtain new members, and advertises in newspapers, magazines and other media. In 1941, the sum of \$169,000 was disbursed for commissions and fees of field agents, \$20,000 for compensation of "managers" engaged in soliciting, over \$17,000 for "field supervision and traveling expenses," \$15,000 for traveling expenses of officials, \$13,000 for medical examinations, \$4,000 for credit investi-

gations of applicants in their respective localities, and \$19,000 for postage and express, telegraph and telephone service. Petitioner also holds direct control of Alliance Printers and Publishers, Inc., located in Chicago, which publishes the *Zgoda*, petitioner's official publication. Over 1,000,000 copies of the daily edition and over 5,000,000 copies of the Sunday edition of this publication are mailed to members outside the State of Illinois. Petitioner, since [fol. 610] its organization, has spent large sums of money for charitable, education and fraternal activities among its members, including the sum of \$252,210.03 in the year 1941.

The Board found:

"Although the respondent has been organized as a non-profit corporation and its charter emphasizes the cultural and social purposes of its incorporation, these factors are not conclusive of the question of our jurisdiction; the determining point is what the corporation does. The activities of the respondent in issuing insurance benefit certificates and its attendant investments mark it as an insurance company. . . . Moreover, the fact that the respondent may not be organized for 'profit' does not place it beyond our jurisdiction. We find that the respondent is engaged in commerce within the meaning of the Act."

Petitioner attacks this finding. It argues that it is a fraternal benefit society operating without profit to it, and that the insurance feature of its business is merely incidental to its main purpose. The Illinois statute under which it is organized and a number of decisions from courts of that State are cited in support of the distinction recognized between insurance companies and fraternal benefit societies. In discussing such distinction, the court in *People v. Commercial Ins. Co.*, 247 Ill. 92, 101, said:

"Life insurance companies are organized to engage in the business of insuring the lives of persons for profit. . . . The primary object of fraternal associations is to obtain social intercourse among the members and to furnish relief and assistance to members and persons dependent upon them,—not upon a commercial or business basis, but upon the broad principle of friendship and brotherly love. The insurance feature is but an incident to the main purpose of organization."

Notwithstanding that petitioner is incorporated as a fraternal association, we think the conclusion is inescapable that it is engaged in the insurance business in a manner similar, if not precisely the same, as mutual life insurance companies. The latter form of company has no capital stock and no stockholders. Policyholders own all of its assets and participate in any distribution of profits. [fol. 611] A description of a mutual company and its operations is found in *Duffy v. Mutual Benefit Life Insurance Co.*, 272 U. S. 613, which also closely reflects the insurance feature of petitioner's activities. In view of the facts heretofore stated, there can be little doubt but that a membership certificate in the Polish Alliance is the equivalent of a policy in an insurance company. The member is the insured, the certificate the policy, and the Alliance the insurer. We think we need not labor the distinction which petitioner seeks to draw between a fraternal society and an insurance company. After all, for the purpose of the instant case, it is rather immaterial what label we attach to petitioner's activities. Of more importance is the nature and character thereof. The fact that it was organized for noble and patriotic purposes and has continued in that groove, is not inconsistent with a finding that it has and is engaging in the business of insurance. Also, we are not impressed with the contention that the latter is merely incidental to the former. So far as we can ascertain from the record before us, we are of the view that it is more accurate to conclude that its fraternal activities are incidental to its insurance business. For instance, in 1941 it spent the sum of \$252,210.03 for charitable and fraternal activities out of a total income of \$5,717,344, or less than 5%. In this connection, it is pertinent to observe that in petitioner's manual of 1940, addressed to all its members, it is stated:

"From the simple and modest beginning of sixty years ago, the Polish National Alliance in recent times has greatly expanded and developed into a large fraternal insurance organization. While ideologically it has remained ever true to its principles and today pursues its ideals with vital eagerness, through its expansion it has entered the field of sharp competition of business institutions.

"\* \* \* Accordingly, in the last few years a large variety of marketable certificates of insurances have been issued, ranging from the ordinary life type to that of the endow-

ment kind, which in turn called for a manual, explaining this increase and change of insurance."

Petitioner also contends that it is not within the Act, even though it be held to be in the insurance business, for [fol. 612] the reason that insurance is not commerce. A long line of Supreme Court decisions have so held, or at any rate have held that the issuing of a policy of insurance is not a transaction in commerce. *Paul v. Virginia*, 75 U. S. 168; *Hooper v. California*, 155 U. S. 648; *N. Y. Life Insurance Co. v. Cravcas*, 178 U. S. 389; *N. Y. Life Insurance Co. v. Deer Lodge County*, 231 U. S. 495. The support which these cases afford petitioner's contention is not so real as first impression might indicate. Certainly they are not decisive. It must be noted that in each of them the court was considering the power of the state to tax or regulate, and not the power of Congress under the Commerce Clause. It has frequently been held that the line which marks the beginning of the state's power to tax or regulate is not the terminal boundary of federal power. "It does not follow that because a thing is subject to state taxation it is also immune from federal regulation under the Commerce Clause." *Binderup v. Pathe Exchange*, 263 U. S. 291, 311. To the same effect, *Swift & Co. v. United States*, 196 U. S. 375, 400; *Chicago Board of Trade v. Olsen*, 262 U. S. 1, 33. The cases dealing with the power of the state were again distinguished in the recent case of *Wickard v. Filburn*, 317 U. S. 111. On page 121, the court said:

"For nearly a century, however, decisions of this Court under the Commerce Clause dealt rarely with questions of what Congress might do in the exercise of its granted power under the Clause, and almost entirely with the permissibility of state activity which it was claimed discriminated against or burdened interstate commerce. During this period there was perhaps little occasion for the affirmative exercise of the commerce power, and the influence of the Clause on American life and law was a negative one, resulting almost wholly from its operation as a restraint upon the powers of the states."

A comparison of petitioner's activities with those of the Associated Press in *Associated Press v. N. L. R. B.*, 301 U. S. 103, makes that decision of persuasive and perhaps controlling importance. There, the court considered the

activities of a cooperative organization of 1,350 members, which did not operate for profit, although its members were representatives of newspapers which did operate for profit. Its means of communication in receiving and transmitting news consisted of telegraph and telephone wires, mes- [fol. 613] senger service, the wireless, and the mail. The court (page 128) said:

"These operations involve the constant use of channels of interstate and foreign communication. They amount to commercial intercourse, and such intercourse is commerce within the meaning of the Constitution. Interstate communication of a business nature, whatever the means of such communication, is interstate commerce regulable by Congress under the Constitution. This conclusion is unaffected by the fact that the petitioner does not sell news and does not operate for profit, or that technically the title to the news remains in the petitioner during interstate transmission."

It is beyond question that a large portion of petitioner's activities were of a business nature and carried on by interstate communication. Applying the pronouncement in the *Associated Press* case, such business is interstate commerce within the power of Congress to regulate.

Even though petitioner's contention that it is not directly engaged in interstate commerce be tenable, it would still be faced with an insurmountable barrier. As already noted, the power of the Board is not limited to commerce but includes "affecting commerce," which Congress has defined as "burdening or obstructing commerce or the free flow of commerce." We think it cannot be reasonably contended that a labor dispute between petitioner and its employees, with strikes and stoppage of work, would not seriously interfere with petitioner's far flung activities and constitute a burden upon commerce, as well as an impairment of the free flow of commerce.

Any doubt heretofore existing as to the broad and well near conclusive power of Congress over transactions and activities "affecting commerce" has been dispelled by the Supreme Court in *Wickard v. Filburn, supra*. In that case, the court had before it an attack upon the Agricultural Adjustment Act of 1938, which fixed marketing quotas for certain farm products, with a penalty for production in



violation of such quotas. The particular facts before the court, briefly stated, were that a farmer sowed 23 acres of wheat, or some 12 acres in excess of his quota. On this excess quota he produced 239 bushels, which were not sold on the market but utilized on his farm as feed for live- [fol. 614] stock. The penalty under the Act was imposed not only upon the excess production but upon all that he had produced. It was argued that this production was purely of a local nature, could not have affected commerce, and was therefore beyond the authority of Congress. The court notes (page 118) that the Act under attack extended federal regulation "to production not intended in any part for commerce but wholly for consumption on the farm." The court, in sustaining the Congressional power, on page 125 said:

"But even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'"

Thus, while the Supreme Court in *N. L. R. B. v. Jones and Laughlin, supra* (page 30), stated "that distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our federal system," it appears, from the *Filburn* case, that the boundary line marking such distinction has been advanced to the point where only a mirage lies beyond. Perhaps the cackle of the farmer's hen as she announces the completion of her daily chore, or the squeal of his pig in its struggle to become a porker, are yet beyond this boundary line, but of this we give no assurance.

This decision that Congress is empowered under the Commerce Clause to regulate a farmer in the production of wheat; even though such "activity be local and though it may not be regarded as commerce," leaves little room to doubt but that the activities of petitioner are within the ambit of Congressional power. The fact, if such it be, that insurance is not commerce or that petitioner is a non-profit organization no longer requires a contrary conclusion. We therefore affirm the Board's determination that petitioner was within the provisions of the National Labor Relations Act.

No good purpose could be served by a detailed discussion of the evidence upon which the Board found that petitioner had engaged in unfair labor practices within the meaning of Sec. 8 (1), (3) and (5) of the Act. It is sufficient, so [fel. 615] we think, to state that we have reviewed the evidence and, appraising it in its aspect most favorable to the Board, as we must, it is sufficient.

Perhaps the most serious question arises from the Board's finding and conclusion that petitioner refused to bargain with the Union, in violation of Sec. 8 (5). Petitioner attacks this finding both as to the appropriateness of the unit, and that the Union represented a majority in such unit. The majority found by the Board was such that the exclusion from the unit of a small number of employees would probably have left the Union with less than a majority. It is the theory of petitioner generally that some six or eight employees were included in the unit and about the same number, doing similar work, excluded, and it is asserted that their inclusion or exclusion depended upon whether they were members of the Union—in other words, that Union employees were purposely included and non-Union employees purposely excluded. The record indicates that there may be merit to petitioner's assertion in this respect. On the other hand, the Board argues with plausibility that certain employees were excluded because of the relation they sustained to management, which was closer and more intimate than that sustained by other employees who were included. We must accept the Board's finding as to an appropriate unit, unless it is clearly arbitrary. *Pittsburgh Plate Glass Co. v. N. L. R. B.*, 313 U. S. 146, 152; *International Association of Machinists v. N. L. R. B.*, 110 Fed. (2d) 29, 46, aff'd 311 U. S. 72. We are not convinced that the Board's action in the instant case was arbitrary.

In this connection, it is pertinent to observe that petitioner's refusal to bargain with the Union was at all times predicated upon its position that it did not come within the Act. At no time did petitioner refuse to bargain because the Union did not represent a majority of an appropriate unit. The complaint charged that "on or about March 26, 1941, and at all times thereafter, the respondent did fail and refuse to bargain collectively with the Union, etc." Petitioner in its answer admitted this charge but stated "that it is not engaged in interstate commerce and therefore not subject to the jurisdiction of this Honorable Board

or the provisions of the National Labor Relations Act." Notwithstanding this situation, we assume the Board had the burden of proving that the Union had a majority of the appropriate unit. On the other hand, it seems an employer [fol. 616] is in an unfortunate position in attempting to justify before the Board its refusal to bargain for a reason that apparently did not occur to it prior to the time of hearing.

The members of the Union went on strike October 7, 1941, as a result of petitioner's refusal to bargain with the Union and other unfair labor practices. The strike lasted until January 27, 1942, when application for reinstatement was made on behalf of the striking employees. We think that the Board's order requiring that such employees be made whole from the date of their application for reinstatement is proper. In this connection, however, we desire to discuss the situation with reference to one Henry Ziolkowski, an employee who joined the strike on October 7, 1941. He soon decided that the strike was ill advised and on October 10 made proper application to return to work. This he was told he could do, provided he would file an application "as a new applicant for work." This he refused to do, on the ground that he would then be considered as a new employee with perhaps a loss of certain seniority privileges. The Board found, and we think properly, that he was entitled to unconditional reinstatement to his former work. The Board also found that the conditional offer of reinstatement was to punish Ziolkowski for having joined the Union and the strike, and that it constituted a discrimination against him in regard to the hire and tenure of his employment. We think this finding must be accepted. However, the Board's order leaves Ziolkowski in the same position as the twenty-six other strikers who did not make application for reinstatement until January 27, 1942. The Board attempts to justify this position upon the ground that "he attempted to return to work while the strike was still in progress, thereby abandoning the concerted activity to which his fellow employees resorted in consequence of the respondent's unfair labor practices." The Board also stated that it would be inequitable to treat him in a different manner from the other strikers. Some theory is advanced, which we do not quite comprehend, that petitioner's discriminatory refusal to reinstate Ziolkowski on October 10, 1941 had the "effect of

returning him to the status of a striker." If such be the case, his status resulted from petitioner's unfair practice and was not a status voluntarily assumed by him. At any rate, he was ordered made whole only from January 27, [fol. 617] 1942, in the same manner as the other strikers who on that date made application for reinstatement.

In our view, this order as to Ziolkowski is clearly erroneous. Certainly, he as an individual, the same as any other employee, had a right to strike or not to strike as he saw fit. After having joined the strikers, he had an equal right to continue on strike with the others or to return to work as he saw fit. He chose the latter course, and, as the Board found, his right to work was discriminatorily denied by petitioner. One member of the Board dissented from the order as to Ziolkowski, stating that he was entitled to be made whole from October 10, 1941, the date when his application to return to work was discriminatorily denied. The soundness of the dissent, in our judgment, is unquestionable, and we take the liberty of quoting therefrom the following statement:

"The policy of the Act would, in my opinion, be best served by encouraging those who have gone out on strike because of their employer's unfair labor practices to return to work and to avail themselves of the administrative remedy which the Act affords them and we should do nothing to deter any individual striker from such action. The effect of the majority's decision would, it seems to me, be to prolong unfair labor practice strikes and to discourage employees from recourse to the adequate relief available to them under the Act."

The Board also found that Anna Owsiak was discriminatorily discharged on October 6, 1941. Petitioner seeks to justify this discharge on some other ground, and contends that the finding is not substantially supported. A reading of the testimony raises some doubt as to the propriety of the Board's finding, but we cannot hold it is without substantial support. It therefore must be accepted.

The Board's order is directed at petitioner, its officers, agents, successors and assigns. In conformity with our previous holdings, the words "successors and assigns" will be eliminated.

Paragraph (d) of the affirmative provisions of the order requires petitioner to post notices "that the respondent's

employees are free to become or remain members of Office Employees' Union No. 20732, A. F. of L., and that the respondent will not discriminate against any of its employees [fol. 618] because of their membership in or activities on behalf of that organization." This provision will be amended so as to inform the employees that they are free to become or remain members of the designated Union "or any other organization of their own choosing," and that petitioner will not discriminate against them because of their membership in or activities on behalf of that organization "or any other organization of their own choosing."

The Board's request for enforcement of its order will be allowed upon amendment to conform with the views herein expressed.

\_\_\_\_\_, Clerk of the United States Circuit Court  
of Appeals for the Seventh Circuit.

A true Copy: Teste.

[fol. 619] And on the same day, to-wit: On the fifth day of June, 1943, the following further proceedings were had and entered of record, to-wit:

Saturday, June 5, 1943.

Court met pursuant to adjournment.

Before: Hon. Evan A. Evans, Circuit Judge, Hon. Will M. Sparks, Circuit Judge, Hon. J. Earl Major, Circuit Judge.

8090

POLISH NATIONAL ALLIANCE OF THE UNITED STATES OF NORTH  
AMERICA, a Corporation, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition for Review of an Order of the National  
Labor Relations Board

This Cause came on to be heard on the transcript of the record from the National Labor Relations Board and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the decision of the National Labor Rela-



tions Board entered in this cause be, and the same is hereby, amended to conform with the views expressed in the opinion of this court, and as amended, be enforced.

And afterwards, to-wit: On the eleventh day of June, 1943, there was filed in the office of the Clerk of this Court, a Motion for Stay of Mandate, which said motion is in the words and figures following, to-wit:

[fol. 620]

No. 8090

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT—OCTOBER TERM, 1942

POLISH NATIONAL ALLIANCE OF THE UNITED STATES OF NORTH  
AMERICA, a Corporation, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

Petition for Review and to Set Aside an Order of the  
National Labor Relations Board

Motion for Stay of Mandate

Polish National Alliance of the United States of North America by Casimir E. Midowicz and Ewart Harris, its Attorneys, moves the Court for a Stay of Mandate for sixty (60) days from June 5, 1943; and submits in support of the Motion the telegram received from Ernest A. Gross, Esq., Associate General Counsel, National Labor Relations Board, consenting to such Stay.

Stay is requested because of the importance of the questions involved and the present pressure of business upon counsel for Polish National Alliance, and the fact that the application for certiorari will not be acted upon by the Supreme Court until the October 1943 Term.

Polish National Alliance states it intends to apply for such certiorari within said sixty (60) days.

Ewart Harris, Attorney for Polish National Alliance.  
Casimir E. Midowicz and Ewart Harris, Attorneys  
for P. N. A.

[fol. 621]

No. 8090

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT—OCTOBER TERM, 1942

POLISH NATIONAL ALLIANCE OF THE UNITED STATES OF NORTH  
AMERICA, a Corporation, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

Petition for Review and to Set Aside an Order of the  
National Labor Relations Board

## NOTICE

To: Ernest A. Gross, Esq. Associate General Counsel  
National Labor Relations Board, Washington, D. C. Les-  
ter Asher, Esq. Regional Attorney National Labor Rela-  
tions Board 2200—176 West Adams, Chicago Ill.

We are this day filing with the Clerk of the United States  
Circuit Court of Appeals in the Seventh Circuit at 1212  
Lake Shore Drive, Chicago, Illinois, a Motion for Stay of  
Mandate, copy of which is herewith served upon you.

Casimir E. Midowicz, Ewart Harris, Attorneys for  
Polish National Alliance.

[fol. 622]

Copy of Telegram

WA289 15 Gov't 3 Extra—Washington DC 10 951A 1943

June 10 AM

8 59

Ewart Harris—

1717 139 North Clark St Chgo

Re Polish National Alliance. Board consents sixty day  
stay decree pending certiorari.

Ernest A. Gross, Associate General Counsel, National  
Labor Relations Board.

[fol. 623] And afterwards, to-wit: On the eleventh day of June, 1943, the following further proceedings were had and entered of record, to-wit:

Friday, June 11, 1943.

Court met pursuant to adjournment.

Before: Hon. Evan A. Evans, Circuit Judge, Hon. Will M. Sparks, Circuit Judge, Hon. J. Earl Major, Circuit Judge.

8090

POLISH NATIONAL ALLIANCE OF THE UNITED STATES OF NORTH AMERICA, a Corporation, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition for Review of an Order of the National Labor Relations Board

On motion of counsel for petitioner, it is ordered that the issuance of the certified copy of the decree herein be, and it is hereby, stayed for a period of sixty days.

\* \* \* \* \*

And afterwards, to-wit: On the twenty-second day of June, 1943, the following further proceedings were had and entered of record, to-wit:

Tuesday, June 22, 1943.

Court met pursuant to adjournment.

Before: Hon. Evan A. Evans, Circuit Judge, Hon. Will M. Sparks, Circuit Judge, Hon. J. Earl Major, Circuit Judge.

[fol. 624] IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT—OCTOBER TERM, 1942, APRIL  
SESSION, 1943

No. 8090

POLISH NATIONAL ALLIANCE OF THE UNITED STATES OF NORTH  
AMERICA, a Corporation, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition to Review and Set Aside and On Request for  
Enforcement of an Order of the National Labor Rela-  
tions Board

Decree

This cause coming on to be heard upon petition of the Polish National Alliance of the United States of North America, a corporation, to review and set aside an order issued against petitioner by the National Labor Relations Board on the 11th day of August 1942, and upon request for enforcement of said order by the National Labor Relations Board, and the Court on June 5, 1943, having rendered its opinion with respect thereto, accordingly, in conformity therewith

It is hereby ordered, adjudged and decreed that the Polish National Alliance of the United States of North America, a corporation, its officers and agents, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Office Employees' Union No. 20732, A. F. of L., as the exclusive representative of the office employees of petitioner's Chicago, Illinois, office, excluding janitors, attorneys, elected officers, the chief clerk of the auditing department, the manager of the real estate department, the inspector of the rent collection department, rent collectors, the chief organizer of the organization department, the personal secretary to the president, the personal secretary to the general secretary, [fol. 625] the confidential secretary to the Censor (employed in Milwaukee, Wisconsin), the assistant secretary (administrative) to the general secretary, the assistant secretary (administrative) to the treasurer, and the librarians:

(b) Discouraging membership in Office Employees' Union No. 20732, A. F. of L., or any other labor organization of its

employees, by discharging, refusing to reinstate, or in any other manner discriminating in regard to the hire and tenure of employment or any term or condition of employment of its employees;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Office Employees' Union No. 20732, A. F. of L., as the exclusive representative of its employees at the Chicago office, excluding janitors, attorneys, elected officers, the chief clerk of the auditing department, the manager of the real estate department, the inspector of the rent collection department, rent collectors, the chief organizer of the organization department, the personal secretary to the president, the personal secretary to the general secretary, the confidential secretary to the Censor (employed in Milwaukee, Wisconsin), the assistant secretary (administrative) to the general secretary, the assistant secretary (administrative) to the treasurer, and librarians, in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment;

(b) Offer to the employees listed in Appendix A, and to Anna Owsiak and Henry Ziolkowski, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing if necessary all employees hired since October 7, 1941, the date of the commencement of the strike, to provide employment for those employees to be offered, and who shall accept, reinstatement. If, thereupon, there is not sufficient employment immediately available for the employees who did not go on strike and for those to be offered, and who shall accept, reinstatement, then all positions shall be distributed by petitioner among employees presently working, excluding those dismissed, and the employees to be offered, and who shall



accept reinstatement, in accordance with petitioner's usual method of reducing its force, without discrimination against any employee because of his union affiliation and activities, following such a system of seniority or other non-discriminatory procedure as has been heretofore applied by petitioner in the conduct of its business. Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list, with priority determined among them in accordance with such system of seniority or other non-discriminatory procedure as has been heretofore applied by petitioner in the conduct of its business, and, thereafter, in accordance with such list, employees shall be offered reinstatement by petitioner to their former or substantially equivalent positions as such employment becomes available and before other persons are hired for such work;

(c) Make whole the employees listed in Appendix A, and Anna Owsiak and Henry Ziolkowski, for any loss of pay they may have suffered as a result of petitioner's refusal to reinstate and discrimination against them, by paying to each of the employees listed in Appendix A, a sum of money equal to the amount each would normally have earned as wages from January 27, 1942, and by paying to Anna Owsiak a sum of money equal to the amount she would normally have earned as wages from October 6, 1941, and by paying to Henry Ziolkowski a sum of money equal to the amount he would normally have earned as wages from October 10, 1941, in each case, to the date of petitioner's [fol. 627] offer of reinstatement or placement upon a preferential list as described in paragraph (b) above, deducting, however, from the amount due to each of the said employees the net earnings of each during the said periods, respectively;

(d) Post immediately in conspicuous places throughout its Chicago, Illinois, office, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the petitioner will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) hereof; (2) that the petitioner will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) hereof; and (3) that petitioner's employees are free to become or remain members of Office Employees' Union No. 20732, A. F.

of L., or any other organization of their own choosing, and that the petitioner will not discriminate against any of its employees because of their membership in or activities on behalf of that organization, or any other organization of their own choosing;

(e) Notify the Regional Director for the Thirteenth Region of the National Labor Relations Board in writing within ten (10) days from the date of this Decree what steps the petitioner has taken to comply herewith.

Evan A. Evans, Judge, United States Circuit Court of Appeals for the Seventh Circuit. William M. Sparks, Judge, United States Circuit Court of Appeals for the Seventh Circuit. J. Earl Major, Judge, United States Circuit Court of Appeals for the Seventh District.

June 22, 1943. O. K. as to from. Casimir E. Midowicz, Ewart Harris for Polish Nat. Alliance.

[fol. 628]

#### Appendix A

Walter J. Andrzejewski  
Waclaw Cichowicz  
Eleanore Dzija  
Emilie Florkiewicz  
Joseph Gajda  
Al. S. Gajkowski  
Lawrence Kargol  
Stanley Kilar  
Elizabeth Kloss  
Eleanor Krzysztofiak  
Helen Lachajczyk  
Joseph Lopatowski  
John Mazur

Ignacy Niemiec  
Ed. Oleszek  
Louis Rozen  
Kasper Sechman  
A. M. Skibinska  
Stanley Spila  
Sophie Szatflarska  
Olga Szymanska  
John Wojcik  
John Zajac  
Victoria Zajatzkowska  
Felicja Ziemiński  
Joe Zurek

[fol. 629] UNITED STATES CIRCUIT COURT OF APPEALS

#### For the Seventh Circuit

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing Typed pages contain a true copy of the

papers filed and proceedings had (except motions for extensions of time, briefs of counsel,) in,

Cause No. 8090

POLISH NATIONAL ALLIANCE OF THE UNITED STATES OF NORTH AMERICA, a Corporation, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-fourth day of June A. D. 1943.

Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[SEAL]

(7095)

## [fol. 630] SUPREME COURT OF THE UNITED STATES

## ORDER ALLOWING CERTIORARI—Filed October 11, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, limited to the first five questions presented by the petition for the writ.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

## [fol. 631] IN THE SUPREME COURT OF THE UNITED STATES

## STIPULATION AS TO PRINTED RECORD—Filed November 9, 1943

Subject to This Court's Approval, It Is Hereby Stipulated and Agreed by and between the attorneys for the respective parties hereto, that for the purposes of the above-entitled proceeding, the printed record may consist of the following:

1. The following portions of Appendix to Petitioner's Brief filed in the United States Circuit Court of Appeals for the Seventh Circuit:

Page:

1. Beginning with the words: "Report of Proceedings" down to the words: "for the Union" on the same page.
3. From Par. 3 beginning "Mr. Asher: Will you" down to the first line on page 16—"Very close to it."
45. Beginning with the first line, down to the words: "Saturday edition only \$2.50" on page 47.
88. Beginning with the words: "While you were", down to the words: "That is right" on page 89.
105. Beginning with the words: "Have you ever," down to the words: "secretaries of the groups" on page 106.
198. Beginning with the first line, down to words: "Exhibit No. 38 was received in evidence."
200. Beginning with the testimony of James M. Algozino, down to "No cross" on page 201.

[fol. 632] 201. The words: "Mr. Asher: The Board rests."

- 202. Beginning on the first line down to the words: "In Chicago, Illinois" on page 207.
- 212. Beginning with the second line down to the words on page 214: "Trial Examiner Hektoen: Surely."
- 217. Beginning with the words: "Who is J. Fafara," down to the words: "He has, yes" on the same page.
- 223. Beginning with the words: "In your position of controller" down to the words: "a two-thirds majority" on page 227.
- 229. Beginning with the words: "Cross Examination" down to the word "Pennsylvania" on page 230.
- 230. Beginning with the words: "You have been telling me about the library" to the words "Their membership premiums" on page 231.
- 232. Beginning on the first line down to the words "in the office" on the same page.
- 232. Beginning with the words "Re-direct Examination" down to the words "There is." on page 233.
- 233. Beginning with the words "Trial Examiner Hektoen: I have just one or two" down to "You may step down" on page 235.
- 236. Beginning with the testimony of "Charles Rozmarek" down to "That is right" on the third line from the bottom of the page 238.
- 307. Board's Exhibit 1 down to the words "Thirteenth Region National Labor Relations Board" on page 312.
- 320. Board's Exhibit 7 down to the words "the solicitation of new members" on page 380.
- 384. Board's Exhibit 9 complete.
- 386. Board's Exhibit 10 complete.
- 403. Board's Exhibit 11 complete.
- 416. Caption: "Board's Exhibit No. 17" and the entire section under "Organization Department" ending with "J. Zajac clerk 67.50" on the same page, including "Semi-Monthly Salary" of prior section.
- 417. Board's Exhibit 18 complete.
- 420. Board's Exhibit 19 complete.
- 420. Board's Exhibit 20 complete.
- 422. Board's Exhibit 21 complete.
- [fol. 633] 426. Board's Exhibit 25 complete.
- 427. Board's Exhibit 26 complete.
- 440. Board's Exhibit 33 complete.



- 442. Board's Exhibit 34 complete.
- 443. Board's Exhibit 35 complete.
- 447. Board's Exhibit 36 complete.
- 448. Board's Exhibit 37 complete.
- 448. Board's Exhibit 38 complete.
- 449. Respondent's Exhibit 1 complete.
- 454. Respondent's Exhibit 2 complete.
- 459. Respondent's Exhibit 3 complete.
- 463. Respondent's Exhibit 4 complete.
- 481. Respondent's Exhibit 6 complete.
- 490. Respondent's Exhibit 11 complete.
- 491. Respondent's Exhibit 12 complete.
- 492. Respondent's Exhibit 13 complete.
- 494. Respondent's Exhibit 14 (statement at foot of page 494).
- 495. Intermediate Report to the words "office to membership" on page 501.
- 521. Beginning "IV. The Effect" down to the words: "free flow of commerce."
- 523. Beginning with the words "Conclusions of law" down to and including Conclusion No. 7 on page 524.
- 530. Exceptions by Respondent down to the words "is contrary to the law" in the third line of page 531.
- 536. Beginning "IV. The Alleged Effect" down to the words "as amended, dismissed" on page 537.
- 538. Beginning "United States of America" down to the words: "National Labor Relations Board" on page 575.
- 578. Beginning "Petition for Review" down to the words: "beyond the jurisdiction of the Board." on page 579.
- 580. Par. (g) on page 580.
- 583. Beginning with the words "Petitioner prays" to "Charles Rozmarek, President," on page 583.
- [fol. 634] 584. Beginning "Points to be relied upon" include points 1, 2, 3, 11, 12, 13 and 14.
- 586. Beginning "Answer of the" down to the words "Union No. 20732 A. F. L." on page 587.
- 592. Beginning "Reply to request" down to the words "be denied" on page 593.

## 2. Opinion and decree of U. S. Circuit Court of Appeals.

It is Further Stipulated and Agreed that the parties may refer to the portions of the certified typewritten tran-

script of the record and exhibits not included in the printed record.

Casimir E. Midowicz, Counsel for Petitioner.

Of counsel: Ewart Harris.

Dated at Chicago, Illinois, this 3rd day of November 1943.

Charles Fahy, Solicitor General of the United States.

Dated at Washington, D. C., this 9th day of November 1943.

Endorsed on Cover: Enter Casimir E. Midowicz. File No. 47,719. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 226. Polish National Alliance of the United States of North America, Petitioner, vs. National Labor Relations Board. Petition for a writ of certiorari and exhibit thereto. Filed August 4, 1943. Term No. 226 O. T. 1943.

(9210)





U. S. COURT  
4 1943  
BROCKLEY

IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, A. D. 1943

**No. 226**

POLISH NATIONAL ALLIANCE OF THE UNITED  
STATES OF NORTH AMERICA, A CORPORATION,

*Petitioner,*

*vs.*

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT AND BRIEF IN SUP-  
PORT THEREOF.**

CASIMIR F. MIDOWICZ,

*Attorney for Petitioner.*

*Of Counsel:*

EWART HARRIS.





# INDEX.

	PAGE
PETITION .....	1-6
Summary and short statement of the matter involved .....	2
Jurisdictional basis .....	3
Questions presented .....	4
Reasons relied on for the granting of the writ of certiorari .....	5
BRIEF IN SUPPORT OF THE PETITION .....	7-49
Opinion below .....	7
Jurisdiction .....	7
Statement of the case .....	7
Specification of errors .....	16
Summary of Argument .....	17
Propositions of law .....	23
Argument .....	26

## CASES CITED.

American Smelting and Refining Co. v. N. L. R. B. 126 Fed. (2nd) 680, 686 .....	25
Apex Hosiery Co. v. Leader, 310 U. S. 469, 487 .....	24, 39
Associated Press v. N.L.R.B., 301 U. S. 102, 125 .....	30, 35
Binderup v. Pathe Exchange, 263 U. S. 291, 311 .....	34
Blumenstock v. Curtis Publishing Co., 252 U. S. 436, 442 .....	23
Borden Mills Inc. In re 13 N.L.R.B. 459, 465 .....	25, 44
Briggs v. Bankers Acc. Ins. Co., 214 Ill. App. 181, 187 .....	23
Cooley on Constitutional Law (4th Ed. 1931) pp. 83, 84 .....	24, 36
Couch (Cyclopaedia of Insurance Law (1929 Ed.) p. 609 .....	23
Edison Co. v. Labor Board, 305 U. S. 197, 229 .....	25

## CASES CITED.

Final Report T.N.E.C. 77th Cong. 1st Sess. Doc. No. 35 p: 41 .....	24, 41
Hooper v. California, 155 U. S. 648, 655 .....	24, 32, 33, 36
Illinois Insurance Code, Art. XVII Ch. 73 Ill. Rev. Stat. 1941 .....	23, 26, 27, 29
Labor Board v. Columbia Co., 306 U. S. 292 .....	25
N. L. R. B. v. Auburn Foundry, 119 Fed. (2nd) 331, 337 .....	25
N. L. R. B. v. Delaware-New Jersey Ferry 128 Fed. (2nd) 130, 137 .....	25, 43
N. L. R. B. v. Ford Motor Co., 114 Fed. (2nd) 905 ....	25
N. L. R. B. v. Tex-O-Kan, 122 Fed. (2nd) 433, 438 ....	25
National Union v. Marlow, 74 Fed. 775, 778 .....	23, 28
N. Y. Life Ins. Co. v. Cravens, 178 U. S. 389, 401 ....	23, 32, 33
N. Y. Life Ins. Co. v. Deer Lodge County 231 U. S. 495, 509 .....	24, 32, 33, 37, 41
Northwestern Life Ins. Co. v. Wisconsin, 247 U. S. 132, 138 .....	23, 31
Paul v. Virginia, 8 Wall. 168 .....	23, 32
People v. Commercial Ins. Co., 247 Ill. 92, 100 .....	23, 27
Peterson v. Manhattan Life Ins. Co., 244 Ill. 329, 337 ..	23, 31
Popovici v. Agler, 280 U. S. 379, 383 .....	24, 39
Seiss Mfg. Co., In re 8 N. L. R. B. 389, 390 .....	25, 45
Western Live Stock v. Bureau of Revenue, 303 U. S. 250 .....	23, 33, 42
Western Union, In re 32 N. L. R. B. 432 .....	25, 45
Western Union, In re 34 N. L. R. B. 338 .....	25, 45
Wickard v. Filburn, 317 U. S. 111 .....	34

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943

\_\_\_\_\_  
No. \_\_\_\_\_  
\_\_\_\_\_

POLISH NATIONAL ALLIANCE OF THE UNITED  
STATES OF NORTH AMERICA, A CORPORATION,  
*Petitioner,*

*vs.*

NATIONAL LABOR RELATIONS BOARD,  
*Respondent.*

\_\_\_\_\_  
PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT.  
\_\_\_\_\_

*To the Honorable, the Chief Justice and Associate Justices  
of the Supreme Court of the United States:*

Your petitioner, Polish National Alliance of the United States of North America, respectfully prays for the writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit, to review a judgment of that Court entered on the 5th day of June, 1943, in Case No. 8090, *Polish National Alliance of the United States of North America, a corporation, petitioner, v. National Labor Relations Board respondent*, upon Petition for Review and to Set Aside an Order of the National Labor Relations Board, and upon the petition of the National Labor Relations Board for enforcement of its order; which judgment enforced the Board's order with certain modifications. Enforcement Decree was entered in conformity therewith June 22nd 1943.

### **Summary and Short Statement of the Matter Involved**

A complaint was issued March 9, 1942, by the National Labor Relations Board against Polish National Alliance of the United States of North America, a fraternal benefit society incorporated under the laws of Illinois, with its principal office in Chicago (App. 307). An order of the Board was entered August 11, 1942 (App. 539) after hearing before an Examiner for the Board, and exceptions to his Intermediate Report had been filed by the Alliance, and oral argument had before the Board. The Order found that the petitioner here (respondent there) was engaged in interstate commerce within the meaning of the National Labor Relations Act, and that Office Employees' Union No. 20732, A.F. of L. had a majority of an appropriate unit on March 26, 1941, when, as found by the order, petitioner refused to bargain collectively with the Union; that petitioner had interfered with its employees' rights under Section 7; that one, Anna Owsiak had been discriminatorily discharged; that employees of petitioner had gone on strike because of petitioner's activities which, the Order found, also resulted in a prolongation of the strike; that one, Ziolkowski was discriminated against; that the striking employees had been refused reinstatement upon their application therefor, January 27, 1942; that petitioner discouraged membership in the Union, and that the activities of petitioner in this regard had a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tended to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

The Order required petitioner to bargain collectively with the Union; to reinstate the striking employees, and one Henry Ziolkowski and make them whole for any loss of pay suffered since January 27, 1942; and to reinstate



Anna Owsiak with back pay from October 6, 1941, the date of her alleged wrongful discharge (App. 572-4).

The Order further required petitioner to cease and desist from refusing to bargain collectively with the Union as the exclusive representative of the office employees of the Chicago office of petitioner (excluding certain designated classes of employees) and from discouraging membership in the Union; and from coercing its employees (App. 572-4).

Petitioner was required to dismiss, if necessary, all employees hired since October 7, 1941, the date of the beginning of the strike, and to place those strikers for whom employment was not immediately available upon a preferential list, and offer them employment as it becomes available (App. 572-4); and to post notices of compliance.

The Decree enforces the Order in all respects, with the exception that it requires petitioner to make Henry Ziolkowski whole for any loss of pay suffered since October 10, 1941, when he requested reinstatement, instead of from January 27, 1942, when the other strikers applied for reinstatement. The Decree also modified the Order by eliminating therefrom the words "successors and assigns" of petitioner; and required the notices to state that the employees of petitioner were free to become or remain members of the designated Union "or any other organization of their own choosing" and would not be discriminated against therefor (App. 621-624).

### **Jurisdictional Basis.**

1. The judgment of the Circuit Court of Appeals allowing the request of the National Labor Relations Board for enforcement of its Order, was entered on June 5, 1943, upon petition by petitioner for review of the Order and petition of National Labor Relations Board for its enforcement. The Petition for Review was filed under Sec.

160(f) Title 29 U. S. Code (1940 Ed.). Decree of enforcement was entered on June 22, 1943.

2. Petitioner is a fraternal benefit society, organized as a not for profit corporation under the laws of the State of Illinois, with its head office in Chicago, Illinois.

3. Jurisdiction is invoked under Sec. 347 A, Title 28, U. S. Code (1940 Ed.).

### Questions presented.

1. Is an Illinois fraternal benefit society, operating in the several States from its head office in Chicago, Illinois engaged in commerce within the meaning of the commerce clause of the Constitution of the United States?

2. Is a fraternal benefit society incorporated under the Laws of the State of Illinois an insurance company, and its operations in issuing benefit certificates the business of insurance?

3. Is insurance "commerce" within the meaning of the commerce clause of the Constitution of the United States?

4. Does the use of the mails and other means of interstate communication and transportation incidentally to the issuance of benefit certificates and the investment activities of a fraternal benefit society bring the society within the provisions of the National Labor Relations Act as thereby "affecting commerce", so that a labor dispute with its employees may be considered as "burdening and obstructing commerce and the free flow of commerce"?

5. Does the incidental use of the mails and of interstate means of communication and transportation by any organization whose primary activity is not commerce within the meaning of the Commerce Clause of the Constitution of the United States, bring such organization within the provisions of the National Labor Relations Act, as

thereby "affecting commerce" and a labor dispute with its employees as "burdening and obstructing commerce and the free flow of commerce"?

6. Did Office Employees Union No. 20732 A. F. of L. have, as a matter of law, from the record in this case, a majority of an appropriate unit of petitioner's office employees at Chicago, Illinois; on March 26, 1941, who had selected it as their representative for collective bargaining?

7. Are the findings of the decree as to alleged coercion by petitioner of its employees; and as to the cause of the strike and its prolongation; and as to the alleged refusal to reinstate the employees Anna Owsiak and Henry Ziolkowski and the strikers named in Appendix "A"; and the enforcement provisions of the decree, based upon substantial evidence and in accordance with the law?

#### **Reasons Relied On for the Granting of the Writ of Certiorari.**

1. The Circuit Court of Appeals in this case decided an important question of Constitutional Law, contrary to a long line of decisions in this Court, when it held that insurance is commerce within the meaning of the Commerce Clause of the Constitution of the United States.

2. The Circuit Court of Appeals decided an important question of Constitutional Law contrary to the decisions of this Court, when it held that use of the mails and of interstate means of communication and transportation, of themselves, bring the user within the meaning of the Commerce Clause of the United States, as being engaged in commerce, or affecting commerce.

3. The Circuit Court of Appeals decided an important question of general and local law, contrary to the law as laid down by this Court, and by the courts of Illinois when it held that a fraternal benefit society, organized under

the laws of Illinois as a not-for profit organization, is, in issuing benefit certificates, engaged in the business of insurance.

4. The Circuit Court of Appeals decided an important question of Constitutional Law contrary to the decisions of this Court, when it held that a fraternal benefit society, organized and operating under the laws of a State, by its use of the mails and other means of interstate communication in its issuance of benefit certificates to persons in the various states, and in its investments in securities issued in other states, is, by such activities "affecting commerce" within the meaning of the National Labor Relations Act, and that a labor dispute with its employees "burdens and obstructs commerce and the free flow of commerce."

5. The enforcement decree of the Circuit Court of Appeals is not based upon substantial evidence in important particulars, and is not in accordance with the law.

Wherefore Your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the Seventh Judicial Circuit, sitting at Chicago, Illinois, commanding said Court to certify and send to this Court on a day to be designated, a full and complete transcript of the record and all proceedings of the Circuit Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this Court; that the decree of the Circuit Court of Appeals be reversed, and that petitioner be granted such other and further relief as may seem proper.

CARIMIR E. MIDOWICZ,

*Attorney for Petitioner,*

*Polish National Alliance of the  
United States of North America.*

IN THE

**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, A. D. 1943

\_\_\_\_\_  
**No.** \_\_\_\_\_  
 \_\_\_\_\_

**POLISH NATIONAL ALLIANCE OF THE UNITED  
 STATES OF NORTH AMERICA, A CORPORATION,**  
*Petitioner,*  
 vs.

**NATIONAL LABOR RELATIONS BOARD,**  
*Respondent.*  
 \_\_\_\_\_

**BRIEF IN SUPPORT OF PETITION FOR WRIT  
 OF CERTIORARI.**

**Opinion Below.**

For opinion, see Appendix to Brief, pp. 605-617.

**Jurisdiction.**

The jurisdictional basis is set out in the Petition, to which reference is made.

**STATEMENT OF THE CASE.**

**The Pleadings.**

A complaint was issued March 9, 1942, by the National Labor Relations Board (amended March 12, 1942) (App.



307, 316) against petitioner, Polish National Alliance of the United States of North America, charging that petitioner is a fraternal benefit society, incorporated under the laws of the State of Illinois, with its main office in Chicago; and stating that it was engaged in the operation of a death, disability and accident insurance business, the publication of a weekly and a daily newspaper and in the investment of funds in real estate and securities.

The complaint alleged that petitioner was licensed to conduct an insurance business in twenty-six states of the United States, in the District of Columbia and in Manitoba, Canada. That it writes insurance, collects premiums and pays out benefits in all the states and territories in which it is licensed. That it had investments throughout the United States in stocks, bonds and mortgages and real estate.

It stated that Office Employees' Union No. 20732 A.F. of L. is a labor organization within the meaning of Section 2 (5) of the Act.

The complaint set out what it alleged to be an appropriate bargaining unit, including several classes of office employees and excluding others; and stated that on or about March 26, 1941, a majority of such unit selected the Union as their representative for collective bargaining, but petitioner refused to bargain collectively with the Union, thereby violating Sec. 8(5) of the Act relating to unfair labor practices (App. 308).

It was charged that one Anna Owsiak had been discharged for Union activities. That a strike began October 7, 1941 and continued until January 7, 1942,—provoked and prolonged by petitioner. That one Henry Ziolkowski on or about October 10, 1941, who had gone out on strike, asked reinstatement and was refused it. That twenty-six strikers also asked reinstatement and were refused.

The acts charged were alleged to have a close relation to interstate commerce and to tend to cause labor disputes "burdening and obstructing commerce and the free flow of commerce."

The answer filed by petitioner (App. 320) admitted that it was a fraternal benefit society incorporated under the laws of the State of Illinois, with its main office in Chicago. Petitioner denied that it was engaged in the operation of a death, disability and accident insurance business and in the publication of a weekly and a daily newspaper. It admitted its investment of funds and that it is licensed to do business in twenty-six states, the District of Columbia and Manitoba, Canada.

Petitioner denied that it wrote insurance, collected premiums and paid out benefits other than as a fraternal benefit society organized under the laws of the State of Illinois. It denied that it conducted an "insurance business" or published a newspaper other than the weekly official organ of the society, to circulate among the members whose subscription was included in their membership fee. It stated that the daily newspaper referred to, was published by a separate corporation whose capital stock was owned by the directors of petitioner *ex officio* (App. 321).

The answer denied that petitioner was engaged in interstate commerce within the National Labor Relations Act (App. 322). It stated that petitioner is a non profit organization with purposes set out in the Preamble to its Constitution, which were to form "a more perfect union of the Polish people in this country; insuring to them a proper moral, intellectual, economic and social development; preserving the mother tongue as well as the national culture and customs; and promoting more effectually all movements tending to secure by all legitimate means the restoration and preservation of the independence of

the Polish territories in Europe." Its stated objects, in addition, were to "promote fraternalism among its members, and provide death, disability, accident and other benefits to its members and their beneficiaries."

The answer denied that an appropriate bargaining unit was set out in the complaint as amended and alleged that certain persons and classes sought to be excluded should be included in the unit (App. 322). It denied that the Union had a majority in an appropriate unit. It admitted its refusal to bargain, saying that it was not engaged in interstate commerce and therefore not within the Act.

The unfair labor practices were denied, also the discriminatory discharge of Anna Owsiak, the alleged coercion and interference, and the refusal to reinstate Henry Ziolkowski and the other strikers. It denied that its conduct led to labor disputes which burdened or obstructed commerce and the free flow of commerce (App. 325).

The hearing before a Trial Examiner resulted in an intermediate report recommending an order as prayed in the complaint as amended, which, upon exceptions and oral argument, was sustained in great part, and a Board order issued accordingly (App. 495, 530).

A petition for review was filed immediately upon the issuance of the Board's order (App. 578), and the Board countered with a request for enforcement of its order (App. 586). The Board's request was granted, subject to minor modifications, and a decree entered, June 22nd, 1943, (App. 621) which is temporarily stayed pending the application for certiorari (App. 620).

### **The Evidence and the Board's Findings.**

The charter of petitioner (App. 456) shows that it is an Illinois corporation, organized as a fraternal benefit society without capital stock, for the sole benefit of its

members and their beneficiaries, and not for profit, having a lodge system with ritualistic form of work and a representative form of government. The Preamble to its Constitution states (App. 326):

“When the Polish Nation, notwithstanding heroic sacrifices and sanguinary struggles, lost its independence, and by decree of Providence became doomed to triple bondage and was divested of its rights to life and development by force of the invaders, that portion thereof, most severely wronged, voluntarily, preferring exile to cruel bondage in the Motherland, sought refuge under the guidance of Kosciuszko and Pulaski, in the free land of Washington, and settling here, found Hospitality and Equal Rights.

These valiant pilgrims, ever mindful of their duties to their newly adopted country and their own nation, founded the Polish National Alliance of the United States of North America for the purpose of forming a more perfect union of the Polish people in this country; insuring to them a proper moral, intellectual, economic and social development; preserving the mother tongue as well as the national culture and customs; and promoting more effectually all movements tending to secure, by all legitimate means, the restoration and preservation of the independence of the Polish territories in Europe.”

Petitioner is organized into 1817 lodges, which meet at least once a month. Its supreme legislative and governing body is the Convention which meets at least once in four years. Delegates to the Convention are selected from groups of lodges, each group forming what is known as a Council, of which there are approximately 190 (App. 443).

The elective officers are the Censor, Vice-censor, and Commissioners, who together form the judicial, appellate

and supervisory body in the Alliance known as the Supervisory Council. There are also elected a President, two Vice-Presidents, General Secretary, Treasurer and Board of Directors. The Board of Directors is the executive and managing body of the Alliance.

On December 31, 1941, petitioner had in force 272,897 benefit certificates of the value of \$159,683,583. It owned assets of \$30,090,835 in cash and bonds issued by the U.S. and by the several States and political subdivisions thereof, and by Canada and Poland; also stocks, mortgages and real estate in several States. Its income during 1941 was \$5,717,344 of which \$3,732,364 was received from members, and \$1,690,250 from investments. In 1941 benefits paid amounted to \$1,845,126 (App. 444).

The operations of the Alliance, beneficiary and fraternal, are centered in the Home Office in Chicago, Illinois.

The Directors of the Alliance are *ex officio* stockholders of Alliance Printers and Publishers Inc. an Illinois corporation with its principal office in Chicago, which publishes the weekly organ of the Alliance, the subscription to which is included in the membership dues; and a daily paper which is put on sale in Illinois, Indiana and Michigan (App. 445).

Petitioner has spent \$7,109,786.87 since its organization for charitable, educational and fraternal activities among its members (App. 481) and in the year 1941 spent for such purposes the sum of \$252,210.03 (App. 481). Some of the principal items of this expenditure are: Educational \$3,620,862.90; National purposes \$2,388,959.52; Relief \$698,042.94; Commissions and Departments \$316,568.02 (Immigration Commission, Help to Immigrants, etc); Civil manifestations and memorials \$83,353.49 (App. 481, 482).

Office Employees Union No. 20732 is a labor organization affiliated with the American Federation of Labor. It



admits to membership office employees of petitioner's Chicago office.

There were 138 employees in the Chicago office (App. 410). Of these, 111 were declared by the Board to be an appropriate bargaining unit (App. 548). The Board included in the unit five chief clerks in charge of departments, over the objection of petitioner that they were supervisory employees. They had all chosen the Union as their representative. The Board excluded the Chief Organizer, the Manager of the Real Estate Department and the Inspector of Rent Collections, none of whom was a Union member. The Board included the secretary to the Chief Medical Examiner who had signed a union card and excluded the secretary to the President, who had not. The Board included the two editors who had signed union applications and excluded two librarians who had not. The eleven rent collectors, who reported each day at the office and had quarters assigned to them there, were excluded. They were not union members (App. 546, 7, 8; 215-223).

The Board found that sixty employees within the appropriate unit of one hundred and eleven had chosen the Union as their bargaining representative. As to one of these, petitioner contended that it had shown an immediate revocation by the signer, but its contention was overruled (App. 279, 548).

Petitioner refused recognition to the Union, stating that it was not subject to the jurisdiction of the National Labor Relations Board (App. 200). When the request was renewed on September 26, 1941, it was denied, but time was asked by petitioner to present the matter to the Supervisory Council which would meet in the following December (App. 64).

Statements of various persons derogatory to the Union are in evidence which petitioner claimed were not au-

thorized by it or made by those in a position to bind it by their statements. The Board found them to be coercive (App. 563).

Anna Owskiak, a union member, whose time card showed that from December 10, 1940 to September 9, 1941, she was absent 48 hours on six separate days, tardy 21 times and absent for a total of 14 hours on six occasions (App. 487), on September 11th, 1941 underwent an operation and returned on October 6th, ready to go to work. She testified that the General Secretary of petitioner told her that because of lack of work it was determined to let her go; that she might be called back in a month or two but should look for another job and take it if she found it. The Secretary testified that he told her to wait for a few days, maybe a few weeks, but that her position would remain open for her.

As Anna Owskiak left the building of the Alliance she met two union officials who told her to wait in their automobile outside. They went into the building and among other things discussed with officials of the Alliance the case of Anna Owskiak. They threatened a strike unless she was put to work; and one, Helen Lahajczyk transferred back to her former position. The President told the Secretary to put Anna Owskiak to work at once, but refused to re-transfer Helen Lahajczyk. One of the union officials demanded that Anna Owskiak, who, unknown to the officers of the Alliance was then outside the building, be telephoned to come back to her job before seven that evening. He did not say that she could be called in from the waiting automobile (App. 71). She was not telephoned. The next day a strike was called.

The Board found that Anna Owskiak was discharged for union activities; but found no discrimination in the transfer of Helen Lahajczyk.

The union officials claimed that the Owsiak and Lahajczyk incidents caused the strike (App. 65, 72).

The strike continued from October 7, 1941 until January 27, 1942, when the strikers, 26 in all, requested reinstatement (App. 423).

Petitioner in certain communications from the Head Office to the lodges and councils charged that certain of the strikers were seeking revenge on the present officers because of their defeat at the last Convention when the "leader of the dissatisfied employees was one of the candidates" for office of Secretary General. In one of the issues of the weekly organ of the Alliance it was stated over the signatures of certain officers that the Directors could not permit persons who had nothing in common with the Polish National Alliance and Polish traditions to decide who was qualified for work in the offices of the Alliance; and that a labor union was not necessary in a fraternal benefit society, organized for the mutual benefit of all; and that, in any event, the question was one properly to be passed upon by the Convention as the "Supreme Governing body of our Society" (App. 421). The article declared that in the opinion of the signers the Alliance was not subject to the provisions of the National Labor Relations Act.

The Board found that "as a result of the respondent's (petitioner here) refusal to bargain; its discriminatory discharge of Anna Owsiak; and its other and numerous acts of interference, restraint and coercion, the employees of the respondent went on strike," and that the strike was prolonged by petitioner's "unlawful activities" (App. 564).

The chief clerk in the Mortuary Department, Henry Ziolkowski, employed since 1919, went out on strike, but on the next day asked permission to return to work, which

was granted. He reported on October 10, the fourth day of the strike and was told to sign an application for work. This he refused to do, "because I did not feel like a new-comer". He did not resume his employment. The Board found that the requirement as to signing an application was an "unfavorable condition" attached to the offer of reinstatement "in order to punish Ziolkowski for having joined the Union and the strike."

On January 27, 1942, the strikers through their attorney requested reinstatement. No reply was made to the attorney's letters. Petitioner stated on the hearing that there did not exist sufficient vacancies to accomodate all the strikers, since the reorganization of positions and the transfer of employees from the real estate department, where business was greatly diminished, to positions formerly held by strikers, and because of the consolidation and abolition of certain positions. A reorganization table was put in evidence (App. 242, 249, 290, 484, 566). It appeared that there had been a net new employment of six persons since the strike. The Board found a wrongful refusal to reinstate the strikers and ordered their reinstatement, with back pay.

### ● Specification of Errors.

The Circuit Court of Appeals erred:

1. In holding that petitioner, a not for profit fraternal benefit society organized under the laws of Illinois, is engaged in the business of insurance.
2. In holding that insurance is commerce within the meaning of the National Labor Relations Act.
3. In holding that the fraternal benefit operations of petitioner affected commerce within the meaning of the National Labor Relations Act, and that a labor dispute between petitioner and its employees

burdened and obstructed commerce and the free flow of commerce.

4. In holding that use of the mails and of the means of interstate communication and transportation brought petitioner within the purview of the National Labor Relations Act, as having affected commerce by such use, whether petitioner has otherwise engaged in commerce or not,
5. In finding that the Union had a majority of an appropriate bargaining unit of petitioner's employees,
6. In entering the enforcement decree herein, and each provision thereof.
7. In refusing to dismiss the complaint as amended.

### Summary of Argument.

#### I.

Petitioner is a fraternal benefit society, organized under the laws of the State of Illinois as a not for profit corporation, having a representative form of government and a lodge system with ritualistic form of work. The issuance of benefit certificates to its members is not engaging in the insurance business, as found by the Court of Appeals. Petitioner is not in commerce, nor do its activities affect commerce, or a dispute with its employees burden commerce, or the free flow of commerce, so as to bring it within the National Labor Relations Act.

The holding of the Circuit Court of Appeals that a fraternal benefit society is engaged in the business of insurance is counter to the law in Illinois and other States. These societies in Illinois are organized and operate under a special Article of the Insurance Code, and are there declared to be charitable and benevolent institutions.



The aims of a fraternal benefit society are religious, cultural and fraternal. They are not permitted to make a profit on their benefit certificates, which are considered incidental to the main purposes of their creation. Without the profit motive there is no commerce in the Constitutional sense. This is recognized by this Court in the *Associated Press* case 301 U.S. 123, 5, where it is stated that although the Press Association was a non-profit organization its members were all "engaged in a commercial business for profit."

## II.

Insurance is not commerce. The Court of Appeals in holding that petitioner was engaged in the insurance business, and was therefore engaged in commerce, or, in any event, its activities affected commerce, refused to follow the long line of decisions in this Court beginning with *Paul v. Virginia*, 8 Wall. 168, that insurance is not commerce. The distinction made by the Court below that these decisions are limited to cases involving State taxation and State regulation, and not to Congressional power to regulate, is not, in view of the language of these decisions, a valid distinction. The cases hold that a policy of insurance is not a commodity and therefore is not the subject of interstate commerce.

## III.

That which in its consummation is not commerce, does not become commerce between the States because incidental transportation or the use of the mails takes place in connection therewith.

The Court of Appeals, in holding, in effect, that mere use of the mails or other means of interstate communication incidentally to the issuance of fraternal benefit certificates, was alone and of itself sufficient to bring any or

ganization, whether conducted for profit or not, within federal regulation, obliterates all distinction between what is commercial in the Constitutional sense and what is merely incidental to operations which in their consummation cannot be regarded as commercial. Such a rule brings religious, philanthropic, cultural and other organizations, using the mails and interstate communication, within federal regulation, and within the operation of the Act in question.

#### IV.

At the time of the enactment of the National Labor Relations Act insurance had long been held by this Court not to be commerce within the meaning of the Commerce Clause. Congress did not challenge this construction and specifically include insurance companies within the coverage of the Act. Their regulation, therefore, remains with the States, and they are not within the Act in question.

This Court has held that insurance is not commerce, the making of the contract of insurance is not engaging in commerce, and the policy of insurance is not an instrumentality of commerce.

The "enactment by Congress of legislation which implicitly recognizes the judicial construction" of a Constitutional provision or a former Act of Congress, "is persuasive of legislative recognition that the judicial construction is the correct one" (*Apex Hosiery* case, 310 U. S. 469, 487).

#### V.

A majority of an appropriate unit of office employees of petitioner did not ask the Union to act as their agent in collective bargaining.

The unit, and the majority for the Union within the unit, as created by the National Labor Relations Board was

the result of illogical and arbitrary action. In its creation the Board contravened its own rule not to include supervisory employees in the same unit with the supervised. It included five supervisory employees who had signed union cards and excluded four who had not. The unit as created consisted of 111 employees, of which 56 is a bare majority. The Board found 60 to have signed union cards. Had the five supervisory employees not have been included there would have been no majority. In other instances employees who had signed union cards were included in the unit, other employees doing similar work who had not signed, were excluded.

## VI.

The employees, Anna Owsiak and Henry Ziolkowski and the strikers named in Appendix "A" to the decree were not discriminatorily refused reinstatement and were not entitled to back pay.

Anna Owsiak, often late and frequently absent, returning from a stay in hospital, was told there was no work for her at the moment. Leaving the office she met two union officials coming into a conference, and was told to wait in their car outside the building. The officials went in and demanded immediate reinstatement of Anna Owsiak or there would be a strike at once. Their demand was granted, but instead of calling in Anna Owsiak and putting her to work the officials required a phone call to her home to be made by petitioner's officers or agents before 7 P.M. This was not done and a strike was called.

The strike began October 7, 1941 and ended January 27, 1942, with a request for reinstatement. In the meantime there had been a reorganization of positions, an abolition of some and consolidation of others. The net new employment was six persons. An offer was made by petitioner in its pleadings and on the hearing to take back

strikers as places became vacant. This was not satisfactory to the Board. The strike was not immediately caused by petitioner, but arbitrarily by the union officials, and the strikers are not entitled to reinstatement with back pay.

Henry Ziolkowski who asked reinstatement about two days after going out on strike was told he could come back to work but that he should sign an application. This he refused to do, giving as his only reason that he did not feel like a newcomer. The request for his signature was a reasonable one and he is not entitled to back pay from the date petitioner offered to take him back upon receiving his written application. The finding of the Board that this request was made to punish the employee, is not warranted by his own evidence.

## VII.

Enforcement of the Board's order should have been denied by the Circuit Court of Appeals, and the complaint as amended should have been dismissed.

Because of the holding of the Circuit Court of Appeals that petitioner in issuing benefit certificates is engaged in the business of insurance it has been necessary to discuss the relation of insurance to interstate commerce and to show that this Court has held that it is not commerce or an instrumentality thereof. Petitioner, however, as a fraternal benefit society is a benevolent and charitable institution by the terms of the Illinois Code and is farther removed from commerce than an insurance company. Its primary aims are cultural and directed toward the independence of Poland. In this it approaches a religious or philanthropic institution, and the issuance of benefit certificates to its members does not make it a commercial institution.

The regulation involved is that of labor relations. Petitioner because of its aims may rightly expect from its employees something more than is expected from the usual commercial employee. It may rightly ask that its employees be zealous for the aims of the organization. In this, too, there is an analogy between it and a church organization. The rule, however, adopted by the Court below, that mere use of the mails in its investment activities, for instance, would bring such an organization within federal regulation under the Act in question, has no reference to the nature or the objects of the organization involved. It works automatically upon showing use of the mails or other means of interstate communication in matters incidental to the collection of funds or the investment side of the organization.

The evidence does not support the findings of violations of the Act by petitioner. The unit and the majority within the unit for bargaining purposes were created by the Board through illogical and arbitrary action, without which there would have been no majority for the Union. Reversal of the judgment of the Circuit Court of Appeals is asked.



## PROPOSITIONS OF LAW.

### I.

Petitioner is a fraternal benefit society, organized under the laws of the State of Illinois as a not for profit organization, having a representative form of government and a lodge system with ritualistic form of work. The issuance of benefit certificates to its members is not engaging in the "insurance business" as found by the Circuit Court of Appeals. Petitioner is not in commerce, nor do its activities affect commerce, or a dispute with its employees burden commerce, or the free flow of commerce, so as to bring it within the National Labor Relations Act.

Article XVII Illinois Insurance Code Secs. 894-927 (Ill. R. S. 1941 Ch. 73).

*People v. Commercial Insurance Co.*, 247 Ill. 92, 100.

Vol. 1 Couch Cyc. of Ins. Law (1929 Ed.) p. 609.

*National Union v. Marlow*, 74 Fed. 775, 776.

*Peterson v. Manhattan Life Ins. Co.*, 244 Ill. 329, 337.

*Briggs v. Bankers Acc. Ins. Co.*, 214 Ill. App. 181, 187.

*Northwestern Life Ins. Co. v. Wisconsin*, 247 U. S. 132, 138.

### II.

**Insurance is not commerce.**

*Paul v. Virginia*, 8 Wall. 168.

*Western Live Stock v. Bureau of Revenue*, 303 U. S. 250.

*Blumenstock v. Curtis Publishing Co.*, 252 U. S. 436, 442.

*N. Y. Life Ins. Co. v. Cravens*, 178 U. S. 389, 401.

## III.

The incidental use of the mails and other means of interstate communication and transportation by petitioner in its operations as a fraternal benefit society is not engaging in interstate commerce. That which in its consummation is not commerce, does not become commerce among the States because incidental transportation takes place.

*Hooper v. California*, 155 U. S. 648, 655.

*N. Y. Life Ins. Co. v. Deer Lodge County*, 231 U. S. 495, 509.

Cooley on Constitutional Law (4th Ed. 1931) pp. 83, 84.

## IV.

At the time of the enactment of the National Labor Relations Act insurance had repeatedly been held by this Court not to be commerce within the meaning of the Commerce Clause. Congress did not challenge this construction by specifically including insurance companies within the coverage of the Act. The regulation of insurance companies, therefore, remains with the States, and they are not within the Act in question.

*Apex Hosiery Co. v. Leader*, 310 U. S. 469, 487.

*Popovici v. Agler*, 280 U. S. 379, 383.

Final Report T. N. E. C. p. 41 (Doc. 35, 77th Cong. 1st Sess.).

## V.

A majority of an appropriate unit of office employees of petitioner did not ask the Union to act as their agent in collective bargaining.

See Argument under this point.

*N. L. R. B. v. Delaware-New Jersey Ferry*, 128 Fed. (2nd) 130, 137.

*In re Western Union*, 32 N.L.R.B. 432.

*In re Western Union*, 34 N.L.R.B. 338.

*In re Borden Mills Inc.* (1939) 13 N.L.R.B. 459, 455.

*In re Seiss Mfg. Co.*, 8 N.L.R.B. 389, 390.

## VI.

The employees Anna Owsiak and Henry Ziolkowski and the twenty-six strikers named in Appendix "A" to the decree were not discriminatorily refused reinstatement and are not entitled to back pay.

See Argument under this point.

*Labor Board v. Columbia Co.*, 306 U. S. 292.

*N.L.R.B. v. Auburn Foundry*, 119 Fed. (2nd) 331, 337.

*American Smelting and Refining Co. v. N.L.R.B.*, 126 Fed. (2nd) 680, 686.

*N.L.R.B. v. Tex-O-Kan*, 122 Fed. (2nd) 433, 438.

*Edison Co. v. Labor Board*, 305 U. S. 197, 229.

*N.L.R.B. v. Ford Motor Co.*, 114 Fed. (2nd) 905.

## VII.

Enforcement of the Board's order should have been denied by the Circuit Court of Appeals, and the complaint as amended should have been dismissed.

See Argument under this point.

## ARGUMENT.

---

### I.

Petitioner is a fraternal benefit society, organized under the laws of the State of Illinois as a not for profit organization, having a representative form of government and a lodge system with ritualistic form of work. The issuance of benefit certificates to its members is not engaging in the "insurance business" as found by the Circuit Court of Appeals. Petitioner is not in commerce, nor do its activities affect commerce, or a dispute with its employees burden commerce, or the free flow of commerce, so as to bring it within the National Labor Relations Act.

In Article Seventeen of the Illinois Insurance Code, Sec. 926 (314) (Ill. Rev. Stat. 1941, Ch. 73) it is declared:

"Every fraternal benefit society organized, licensed or operating under this Code is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax, other than taxes on real estate and office equipment."

Petitioner was chartered by the State of Illinois as a not for profit corporation without capital stock, and is operating under the provisions of said Article Seventeen. It is carried on for the sole benefit of the beneficiaries and its members and not for profit. It has a lodge system with ritualistic form of work and a representative form of government, and is organized into 1817 lodges which meet at least once a month. Its supreme legislative and governing body is the Convention which meets at least once

each four years. Delegates to the Convention are selected from groups of lodges which form Councils. It has a number of elective officers, and its elected Board of Directors is its executive body.

The Court of Appeals found that notwithstanding petitioner is incorporated as a fraternal association it is "engaged in the insurance business" in a fashion similar to mutual life insurance companies.

This holding runs counter to a number of decisions in Illinois and in other States, and to the policy of the State of Illinois, which declares such associations to be charitable and benevolent organizations (Art. XVII Ill. Ins. Code, Sec. 926 (314) R. S. Ill. 1941 Ch. 73). In Vol. 1 Couch Cyc. of Ins. Law (1929 Ed.) page 609, it is said:

"The statutory distinction is that insurance companies are organized for ordinary business purposes, for investment and for the benefit of credit, as well as for the protection of the family, whereas fraternal Orders and benefit societies are not organized for the purpose of profit . . . Certificates in mutual benefit societies do not constitute insurance within the meaning of the provisions against other, over or double insurance."

In *People v. Commercial Ins. Co.*, 247 Ill. 92, 100, the Supreme Court of Illinois declares:

"That there is a fundamental difference between life insurance companies on the one hand, and those organizations commonly known as fraternal associations, fraternal beneficiary societies or mutual benefit societies on the other hand, requiring separate codes for the management and regulation of each, has been recognized by the Legislature of this State and by this court ever since such associations or societies came into general use as a means of furnishing aid to members and to families of deceased members . . .



This distinction has been consistently maintained by the legislature ever since, by declaring that such associations or societies shall not be deemed insurance companies, by expressly exempting them from the Acts passed to regulate life insurance companies and by enacting separate codes for their organization and control . . .

Life insurance companies are organized to engage in the business of insuring the lives of persons for profit. The primary object of fraternal associations is to obtain social intercourse among the members and to furnish relief and assistance to members and persons dependent upon them not upon a commercial or business basis, but upon the broad principle of friendship and brotherly love. The insurance feature is but an incident to the main purpose of organization. It is united to the payment of benefits to members and to persons dependent upon them and is conducted not for the purpose of gain or profit to the association, but to further the benevolent purposes of its organization."

In *National Union v. Marlow*, 74 Fed. 775, 778, the Court say:

"The term 'fraternal' can properly be applied to such an association for the reason that the pursuit of a common object, calling or profession usually has a tendency to create a brotherly feeling among those who are thus engaged. It (the Legislature) has declared in effect, or intended to so declare, that when a certain number of persons, among whom some natural bond of sympathy or interest existed, should form an association for self improvement, or for the purpose of aiding one another and strengthening the bond of union, such association might be consolidated into a corporation, and incidentally, to further the

ends of its creation, might provide for the relief of members and their families in case of sickness or death by levying assessments and issuing benefit certificates . . . this right, however, is merely incidental to the main purpose of its creation."

The Preamble to petitioner's Constitution declares that the purposes of the Polish National Alliance are to "form a more perfect union of the Polish people in this country; insuring to them a proper moral, intellectual, economic and social development; preserving the mother tongue as well as the national culture and customs and promoting more effectually all movements tending to secure by all legitimate means the restoration and preservation of the independence of the Polish territories in Europe."

These are not commercial aims. The issuance of benefit certificates is but incidental to membership in an organization whose main purposes are cultural and also directed toward regaining by all lawful means the independence of the Polish territories in Europe.

It is the long established policy of the State to encourage thrift among the membership of these organizations, whose principal purposes are religious and cultural and fraternal, and to this end to permit the issuance of benefit certificates, yet to permit no profit to be made by such associations. For their encouragement, it exempts them, as charitable and benevolent organizations, from the usual incidence of taxation (Art. XVII Ill. Ins. Code, Sec. 926 (314). R. S. of Ill. 1941, Ch. 73).

The question of their difference from insurance companies is not one of logic: it is a question of public policy. To say that a fraternal benefit certificate is an insurance policy by another name, is to miss the distinction clearly made by statute between an organization whose principal purposes are religious or cultural or fraternal, or all

three, and which is permitted for the benefit of its membership and their dependents to issue benefit certificates as a financial protection against the losses that come in the train of sickness and death; and an organization whose sole purpose is the sale of insurance at a profit.

Without profit as an aim there is no commerce in the Constitutional sense. This is recognized in the case of *Associated Press v. N.L.R.B.*, 301 U. S. 103, 125 which the Court of Appeals found to be controlling in the present case. The Associated Press, this Court declared "is an instrumentality set up by constituent members who are engaged in a commercial business for profit."

Petitioner is not engaged in a commercial business for profit nor are its constituent lodges, its councils, its Convention, its officers or its directors so engaged in their official capacity. It is principally engaged in promoting fraternalism among its members and in keeping alive among its thousands of members the culture and language of Poland; and most particularly at this time, in striving by all lawful means for the liberation of Poland. These aims are expressed in manifold activities which cannot be measured, as it would seem the Court of Appeals measured them, by taking the total income of the Polish National Alliance, (which must be invested and expended in accordance with the laws of Illinois and the constitution and bylaws of the Alliance,) and comparing this income with the very substantial sum spent on cultural and charitable objects, which, though substantial, was but five per cent of the income; and drawing the conclusion, which the Court did, that the cultural, fraternal and benevolent purposes of the Alliance are but incidental to its activities surrounding the issuance of benefit certificates.

Nor is it a question of more or less—of more certificates issued and less cultural activity. It is a question of the

inherent difference between a commercial and a non-profit organization; between trade and fraternalism; between commerce and culture—a distinction well recognized in the law, which places the profit organizations on one side and the non-profit organizations, despite a similarity of activities in one phase of their operations, on the other.

As said by the Supreme Court of Illinois in *Peterson v. Manhattan Life Ins. Co.*, 244 Ill. 329, 337:

“In the ordinary sense a fraternal order is not an insurance company. . . . The two classes of corporations are organized under different acts and for different purposes.

The insurance company is an ordinary business corporation, and its policies are obtained for ordinary business purposes, for investments, for security, for the benefit of credit, as well as for the protection of the family.

The beneficiary society is organized not for the purposes of profit.”

The distinction has been noted and declared in this Court also.

In *Northwestern Life Ins. Co. v. Wisconsin*, 247 U. S. 132, 138, where it was contended that because a State law exempted fraternal beneficiary associations from the questioned tax, it was a discriminatory law. The Court held not, saying: “We think the differences (between an insurance company and a fraternal benefit society) are plain. The fraternal and beneficial features are wanting in organizations like that of Northwestern Company.”

## II.

**Insurance is not commerce.**

The Circuit Court of Appeals declared that although "a long line of Supreme Court decisions" have held that "insurance is not commerce" or "at any rate have held that the issuing of a policy of insurance is not a transaction in commerce," these cases, *Paul v. Virginia*, 75 U. S. 168; *Hooper v. California*, 155 U. S. 648; *N. Y. Life Ins. Co. v. Cravens*, 178 U. S. 389; *N. Y. Life Ins. Co. v. Deer Lodge County*, 231 U. S. 495,—are not decisive, for the reason, as the Court says, that "in each of them the court was considering the power of the State to tax or regulate, and not the power of Congress under the Commerce Clause."

The language of these cases is not thus limited, so as to be inapplicable to the case at bar. The Court, in them, discusses the nature of the insurance contract itself, as to whether or not it is an article of commerce, and decides that it is not.

In *Paul v. Virginia*, 8 Wall. 168, the Court say:

"Issuing a policy of insurance is not a transaction of commerce. The policies are simple contracts. . . . These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another and then put up for sale. . . . Such contracts are not interstate transactions, though the parties may be domiciled in different States.



In *Western Live Stock v. Bureau of Revenue*, 303 U. S. 250, the Court say:

"That the mere formation of a contract between persons in different States is not within the protection of the commerce clause, at least in the absence of Congressional action, unless the performance is within its protection, is a proposition no longer open to question." (Citing *Paul v. Virginia* and other cases.)

In *Hooper v. California*, 155 U. S. 648, 655, it is declared:

"The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. The making of such a contract is a mere incident of commercial intercourse."

In *N. Y. Life Ins. Co. v. Cravens*, 178 U. S. 389, 401, the Court say:

"We will only repeat: The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. The making of such a contract is a mere incident of commercial intercourse."

In *N. Y. Life Ins. Co. v. Deer Lodge County*, 231 U. S. 495, it is said:

"The decision of the cases is that the contracts of insurance are not commerce at all, neither state nor interstate."

These are general statements about the nature of the contract of insurance. They do not concern alone, and are not limited to the contract of insurance, viewed as a subject of State taxation, or of State regulation. They are made with reference to insurance as a subject of interstate commerce, and they declare that an insurance

contract is not a commodity in the generally accepted meaning of the term. It is not relevant to this point, therefore, to proceed, as does the Court of Appeals, to discuss the limits of State and Federal power with reference to a possible regulation of insurance or insurance companies, and to say that this Court, in the case of *Binderup v. Pathe Exchange*, 263 U. S. 291, 311, has held that it does not follow because a thing is the subject of state taxation it is also immune from federal regulation under the Commerce Clause. The question, at this point, is not the boundaries of federal and state regulation, but the essential nature of the contract of insurance, viewed as to its possibility or otherwise of becoming the subject of interstate commerce.

The Court of Appeals in this connection also relies heavily upon *Wickard v. Filburn*, 317 U. S. 111, where the question involved is the constitutional power to regulate production of an undoubted commodity,—farm produce,—which might become the subject of interstate commerce, and in any event could exert “a substantial economic effect on interstate commerce” either directly or indirectly. The question there was not, as it is here, whether the regulated subject could be the subject of interstate commerce.

### III.

The incidental use of the mails and other means of interstate communication and transportation by petitioner in its operations as a fraternal benefit society is not engaging in interstate commerce. That which in its consummation is not commerce, does not become commerce among the States because incidental transportation takes place.

Although insurance is not commerce, yet, because petitioner uses the mails and other means of interstate com-

munication in connection with its issuance of benefit certificates to its members, the Court of Appeals held it to be within the provisions of the National Labor Relations Act, as having, by this use, "affected commerce." A labor dispute between petitioner and its employees was, therefore, held to burden or obstruct commerce or the free flow of commerce.

The Court relied upon *Associated Press v. N.L.R.B.*, 301 U. S. 103, which, however, can be distinguished from the case at bar by the fact that the operations of the members of Associated Press were clearly within the established conception of commerce between the States. This Court, in that case, (p. 128) say:

"The Associated Press is engaged in interstate commerce within the definition of the statute and the meaning of Article 1, Section 8 of the Constitution. It is an instrumentality set up by constituent members who are engaged in a commercial business for profit."

"It has," says the Court, "about 1350 members in the United States, and practically all the newspapers represented in its membership are conducted for profit."

The Court of Appeals ignored the fact that in all its operations, cultural, fraternal, and those surrounding the issuance of benefit certificates, petitioner is a non profit organization, and does not and cannot under its charter and the laws of the State of its creation make a profit by any of its activities. The Court, also, refused to be bound in this case by the "long line of decisions" of this Court that insurance is not commerce. It based its decision that petitioner was within the purview of the National Labor Relations Act upon the use by petitioner of the mails

and other means of interstate communication. The Court said:

"It is beyond question that a large portion of petitioner's activities were of a business nature and carried on by interstate communication. Applying the pronouncement in the *Associated Press* case, such business is interstate commerce within the power of Congress to regulate."

The Court then proceeds to hold that even if "petitioner's contention that it is not directly engaged in interstate commerce be tenable, it would still be faced with an insurmountable barrier," in that its "far flung activities" affect commerce within the meaning of the Act, and a labor dispute within its organization burdens or obstructs commerce or the free flow of commerce.

"That" says Cooley on Constitutional Law (4th Ed. 1931, p. 84) "which in its consummation is not commerce, does not become commerce among the States because incidental transportation takes place."

In *Hooper v. California*, 155 U. S. 645, 655, the Court say:

"If the power to regulate commerce applied to all the incidents to which said commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the states; and would exclude State control over many contracts purely domestic in their nature.

The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. The making of such a contract is a mere incident of commercial intercourse."

In *New York Life Ins. v. Deer Lodge County*, 231 U. S. 495, 509, it is declared:

“The number of transactions do not give the business any other character than magnitude. Nor, again, does the use of the mails determine anything. That (agents, and applicants for insurance) may live in different States and hence use the mails for their communication does not give character to what they do; and cannot make a personal contract the transportation of commodities from one State to another.

The decision of the cases is that the contracts of insurance are not commerce at all, neither state nor interstate.”

In this case the Court say (on page 507):

“It was also urged that modern life insurance had taken on essentially a national and international character, and that when *Paul v. Virginia* was decided, the business was to a great extent local, that is, conducted through the domestic contracts by stock companies. The great and commanding organizations of the present day had hardly begun the amazing development which has made them the greatest associations of administrative trusts in the business world.

These contentions were earnestly made; the reply to them deliberately meditated and its extent fully appreciated. The ruling in *Paul v. Virginia* and other cases applied. . . . We . . . repeated that the business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce” (p. 508).

The rule laid down by the Circuit Court of Appeals in the case at bar, that mere use of the mails and other means of interstate communication is alone and of itself sufficient to bring any organization, whether conducted for profit or not, within federal regulation, obliterates all dis-



inction between what is commercial in the true sense, and what is merely incidental to operations which in their consummation cannot be regarded as commercial in any sense. Such a rule might logically be applied in any case where use of the mails is shown, no matter for what purpose they were used—religious, cultural, philanthropic, or any other. Once use of the mails was shown, courts would have to inquire no further as to the nature or purpose of the communications. Federal regulation would be automatically applied. This is not the law.

#### IV.

At the time of the enactment of the National Labor Relations Act insurance had repeatedly been held by this Court not to be commerce within the meaning of the Commerce Clause. Congress did not challenge this construction by specifically including insurance companies within the coverage of the Act. The regulation of insurance companies, therefore, remains with the States, and they are not within the Act in question.

Even if it could be held, as determined by the Circuit Court of Appeals, that for the purpose of regulation by Congress fraternal benefit societies and insurance companies, which use the mails and other means of interstate communication, are engaged in commerce; and their activities in this regard affect commerce; and labor disputes between them and their employees burden or obstruct commerce or the free flow of commerce; yet, Congress has not chosen to exercise such a power of regulation by its enactment of the National Labor Relations Act.

The terms "commerce", "affecting commerce", "burdening commerce and the free flow of commerce" must be construed in the light of the historical fact, assumed to be known to Congress, that insurance by a long line of deci-

sions of the Supreme Court is held not to be commerce, and the making of the contract of insurance is not engaging in interstate commerce, and the contract itself is not an instrumentality of commerce. In the absence of an expressed intent to include insurance as a subject of the regulatory provisions of the Act, it must, therefore, be considered that insurance is not within its coverage.

In *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 487, the Court say:

"A point strongly urged in behalf of respondents in brief and argument before us is that Congress intended to exclude labor organizations and their activities wholly from the operation of the Sherman Act. To this the short answer must be made that for the thirty-two years which have elapsed since the decision of *Loewe v. Lawlor*, 208 U. S. 274, this Court, in its efforts to determine the true meaning and application of the Sherman Act has repeatedly held that the words of the act, 'Every contract, combination . . . or conspiracy in restraint of trade or commerce' do embrace to some extent and in some circumstances labor unions and their activities; and that during that period Congress, although often asked to do so, has passed no act purporting to exclude labor unions wholly from the operation of the Act. On the contrary Congress has repeatedly enacted laws restricting or purporting to curtail the application of the Act to labor organizations and their activities, thus recognizing that to some extent not defined they remain subject to it.

Whether labor organizations and their activities are wholly excluded from the Sherman Act is a question of statutory construction, not constitutional power. The long time failure of Congress to alter the Act after it had been judicially construed, and the enact-

ment by Congress of legislation which implicitly recognizes the judicial construction as effective, is persuasive of legislative recognition that the judicial construction is the correct one."

In *Popovici v. Agler*, 280 U. S. 379, 383, which arose upon an application by a vice-consul for a writ of prohibition to restrain a divorce proceeding in a State Court, the petitioner relied on Article 3 Section 2 of the Constitution, which provides among other things, that jurisdiction of:

"Suits and proceedings against Ambassadors or other public ministers or their domestics, or domestic servants, or against consuls or vice-consuls,"

shall be in the United States Courts, exclusive of the Courts of the several states. This Court, speaking through Mr. Justice Holmes, said (p. 383):

"The language so far as it affects the present case is pretty sweeping, but like all language it has to be interpreted in the light of the tacit assumptions upon which it is reasonable to suppose that the language was used. It has been understood that 'the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States,' and the jurisdiction of the Courts of the United States over divorces and alimony always has been denied."

"The words quoted from the Constitution do not of themselves and without more exclude the jurisdiction of the State. The statutes . . . do not affect the present case if it be true, as has been unquestioned for three-quarters of a century that the Courts of the United States have no jurisdiction over divorce. If when the Constitution was adopted the common under-

standing was that the domestic relations of husband and wife, parent and child, were matters reserved to the States, there is no difficulty in construing the instrument accordingly, and not much in dealing with the statutes. Suits against consuls and vice-consuls, must be taken to refer to ordinary civil proceedings and not to include what formerly have belonged to the ecclesiastical Courts."

Congress not having specifically included insurance companies, their regulation, therefore, remains with the States, and they are not within the Act in question.

In *N. Y. Life Ins. v. Deer Lodge County*, 231 U. S. 495, 509, the Court say:

"If insurance is commerce and becomes interstate commerce whenever it is between citizens of different States, then all control over it is taken from the States, and the (State) legislative regulations which this Court has heretofore sustained must be declared invalid."

In the *Final Report of the Congressional Temporary National Economic Committee*, upon legal reserve life insurance, the recommendations of the Committee are prefaced by these words (p. 41):

"Life insurance business is regulated by the States."

The Report then proceeds:

"Our studies have disclosed conditions which lead to the following recommendations *which are respectfully made for the consideration of the several States in which these companies are domiciled*" (T.N.E.C. Report p. 41, 77th Cong. 1st. Sess. Doc. 35). (Italics supplied.)

In *Western Live Stock v. Bureau of Revenue*, 303 U. S. 250, the Court say:

"That the mere formation of a contract between persons in different States is not within the protection of the commerce clause, at least in the absence of Congressional action, unless the performance is within its protection, is a proposition no longer open to question." (Citing *Paul v. Virginia* and other cases.)

Congress, had it chosen to challenge the doctrine that insurance is not commerce, might have been expected, in view of the well known and often declared position of the Supreme Court in this regard, to have explicitly included insurance companies within the sweep of the National Labor Relations Act. This it did not do, and the silence of Congress must be considered as an exclusion of such organizations from the operation of the Act.

## V.

**A majority of an appropriate unit of office employees of petitioner did not ask the Union to act as their agent in collective bargaining.**

The Circuit Court of Appeals, in discussing this question, say that the "record indicates that there may be merit to petitioner's assertion" that the Board included certain employees who had signed union cards and excluded others with similar duties who had not.

Out of the 138 employees of the Chicago office, the Board found a group of 111 employees to be the appropriate bargaining unit. Of this unit it found sixty had designated the Union as their agent for bargaining. A bare majority would be 56. The inclusion by the Board of



five chief clerks, contrary to its own rule that supervisory employees should not be included in the same unit with the supervised, was sufficient to give the majority to the Union. All five had signed union cards: without them the Union would not have had a majority in the unit.

The action of the Board in this respect was arbitrary. In other respects, also, the unit created by the Board, and the majority which it carved out of the unit, were arbitrary and illogical and in contravention of the Board's own rules.

Not only did the Board include within the unit the five chief clerks, who had signed union cards, and whose duties and whose salaries were clearly those of supervisory employees (App. 412-416; 545; 220-223): it excluded four similar supervisory employees who had not designated the union as a bargaining agent (App. 546, 547). The assistant to the Comptroller, who in the absence of the Comptroller was in charge of the Department, had signed a union card and was included by the Board in the unit and the majority; the assistant to the General Secretary who had not signed such a card, was excluded. Two editors who signed union cards were included in the unit; two librarians who had not signed, were not. The confidential secretary to the Chief Medical Examiner who had signed a card, was included; the confidential secretary to the General Secretary, who had not signed, was excluded (App. 545 *et seq.*). It is apparent that the basis of inclusion or exclusion in almost identical cases was the signing or otherwise of the union card. In no other way could a majority have been achieved for the Union.

In *N.L.R.B. v. Delaware and New Jersey Ferry Co.*, 128 Fed. (2nd.) 130, 137, it is declared:

"The inclusion of supervisory employees in a bargaining unit of any kind is unusual. The courts al-

most invariably have held the employer responsible for acts which constitute unfair labor practice when committed by supervisory employees of no higher grade than foreman or assistant foreman."

That the five supervisory employees included in the unit were clearly such is shown by the record. Ziolkowski (App. 220) was in charge of the Mortuary Department with two or three employees subordinate to him. His salary was \$235.00 per month. The next highest salary in his department was \$145.00 (App. 220, 414).

Pawlowski was in charge of the Statistical Department with four or five subordinates. His salary was \$180.00 per month: the next highest salary in his department was \$115.00 (App. 220, 414).

Andrzejewski was head clerk in the Underwriting Department with two subordinates. His salary was \$185.00 per month: the next highest was \$115.00 (App. 414).

Neuman is assistant to the Comptroller, who takes charge when the Comptroller is absent. His salary was \$175.00 per month: the next highest was \$135.00 (App. 221, 416).

Hawrylewicz was in charge of the Youth Department with three or four subordinates. His pay was \$200.00 per month: the next highest in his department was \$110.00 per month.

The Board in a number of decisions has laid down the rule that supervisory employees should not be included in a bargaining unit, and has discussed the elements which put an employee in the supervisory class.

In *Borden Mills Inc.* (1939) 13 N. L. R. B. Reports 459, 465, the Board say: "The power to employ or discharge is not the sole criterion by which we determine whether an employee speaks with the voice of his employer. Once

an employee is vested with the authority to give orders, he becomes a part of the supervisory and managerial system, even if the orders he gives are not initiated by him.

In *Seiss Mfg. Co.* (1935) 8 N. L. R. B. 389, 390 the Board say that employees are classed as supervisory who spend a considerable amount of time in assigning work, and report directly to the general foreman, although partly engaged in production operations and without authority to hire or fire.

In *Western Union* cases (1941) 32 N. L. R. B. 432; 35 N. L. R. B. 273; 34 N. L. R. B. 338, it is declared that employees who supervise the work of employees under them, assign and distribute work, report infractions of regulations and earn more wages than persons who work under them are to be excluded from the unit as supervisory employees. In 34 N. L. R. B. 338 it appears that the supervisory employees earned from \$15.00 to \$20.00 per month more than those they supervised.

## VI.

The employees Anna Owskiak and Henry Ziolkowski and the twenty-six strikers named in Appendix "A" to the decree were not discriminatorily refused reinstatement and are not entitled to back pay.

In the case of Anna Owskiak, who was found by the Board to have been discriminatorily discharged, the Court of Appeals say that a "reading of the testimony raises some doubt as to the propriety of the Board's finding, but we cannot hold it is without substantial support." This employee was frequently late and often absent, and finally was obliged to undergo an operation from which she returned to find that there was no work for her. As she was leaving the office of petitioner, she met two of the

union officials going in for a conference with the officers of petitioner. She told her story and was directed to wait in the officials' automobile then parked at the door. This she did, while the officials were in conference, at which conference they demanded her immediate reinstatement under threat of a strike. Their demand was at once complied with, in order to avoid a strike. Instead of telling the officers that the employee was waiting outside, the officials demanded that they telephone her home before seven o'clock. For some reason this was not done, and the strike was immediately called (App. 66, 67, 71, 136). There had been coupled with the demand for this employee's reinstatement a demand for the retransfer of an employee named Lahaczyk to her old position. This demand was refused. The Board did not find her transfer discriminatory and did not require a retransfer.

In view of the threat made at the conference it must be assumed that these two incidents were made the immediate cause of the strike. It should not have occurred. Immediate compliance with one demand had been granted, and the other demand was obviously an improper one, affecting internal discipline, which could not be granted. The responsibility for the strike, therefore, is upon the strikers and the union officials. The strike was hastily called, ineffective as a demonstration and unsuccessful as a weapon. It began October 7, 1941, and ended January 27, 1942 with a request for reinstatement (App. 65, 67, 68, 72, 423, 4, 5).

Before the request for reinstatement petitioner had reorganized its office positions and made a number of transfers from the Real Estate department, which by reason of lack of business had become overstaffed. It had abolished certain positions and consolidated others. During the entire period of the strike the net addition of new employees was six. On the hearing an offer was made

by the General Secretary to rehire strikers as positions became available (App. 289). The same offer had been made in the pleadings (App. 324). The Board ordered reinstatement of the strikers and that they be made whole for any loss of pay suffered by the refusal to reinstate them (App. 568).

The Board found that the employe Ziolkowski, who requested reinstatement within two or three days after he had gone on strike, and whose request was granted, but who refused to sign an application for employment, because, as he said, he did not feel like a newcomer, was entitled to reinstatement as of the date of all the striker's request for reinstatement and to back pay from that date. (The Court modified this to grant back pay from the date of his request for reinstatement.) The Board held that the request made to this employe to sign an application for employment on his return to work was an unfavorable condition imposed as a punishment, and that he was justified in refusing to sign (App. 115, 116, 563). He testified on cross examination that no seniority rights were involved and that the only thing he had in mind was that he did not feel like a newcomer. The request was not unreasonable as the written application might well have been required as a matter of record. The Board was not warranted in its inference that the intent was to punish the employe, and its finding of such intent is not based upon substantial evidence.

## VII.

Enforcement of the Board's order should have been denied by the Circuit Court of Appeals, and the complaint as amended should have been dismissed.

Because of the holding by the Circuit Court of Appeals that petitioner as a fraternal benefit society is engaged in



the business of insurance, it has been necessary to discuss the relationship of petitioner to interstate commerce as though it were an insurance company. Yet, even upon that assumption, it is not engaged in commerce, nor do its activities in the issuance of benefit certificates affect commerce; and a labor dispute within its organization does not burden commerce or the free flow of commerce.

Petitioner, however, is farther removed from commerce than an insurance company. It is a non profit organization, declared, for the purpose of taxation and regulation by the State of its creation to be a charitable and benevolent institution. Its primary aims are cultural and are also directed toward the restoration of the independence of Poland, and the fostering of unity and fraternalism among persons of Polish descent in the United States. These aims are not commercial. The issuance of benefit certificates to its members is not a commercial transaction, for no profit is permitted to be made therefrom; and, despite the number of certificates and the amount of funds involved, this activity is but an incident to membership in the organization.

To bring such an organization within federal regulation because of its use of the mails and other means of interstate communication is to adopt a rule of decision that works automatically, and without reference to the nature of the organization involved or the primary purposes of its creation. The rule would apply equally to religious and purely philanthropic organizations which use the mails and other means of interstate communication.

The regulation involved in this case is that of the labor relations of petitioner. In an organization, devoted as is the Polish National Alliance to the purposes of keeping alive the Polish language and culture, and securing and maintaining the independence of Poland by all lawful means, it will be obvious that employment in its Home

Office and throughout its organization may depend on other factors than those usually sought in an industrial or commercial employee. Enthusiasm for Polish culture and for the freedom of Poland, faith in the future of Poland and its culture, and willingness to work for the independence of Poland by all lawful means might well be sought by petitioners in its employees, and rightfully required as a condition of employment. In these respects it is similar to a religious body. The issuance of benefit certificates to its members does not make such an organization an insurance company or bring its operations within the regulation of Congress under the Act in question.

The evidence of the cause of the strike, its prolongation, and the refusal to reinstate certain employees, does not support the findings of the Board that in these particulars petitioner violated the National Labor Relations Act. The unit created by the Board for collective bargaining clearly was the creature of illogical and arbitrary action by the Board, without which there could have been no majority for the Union.

The judgment of the Circuit Court of Appeals should be set aside, the enforcement decree vacated, and the complaint, as amended, dismissed.

Respectfully submitted,

CASIMIR E. MIDOWICZ,

*Attorney for Petitioner.*

*Of Counsel:*

EWART HARRIS.



**FILE COPY**

Office - Supreme Court, U. S.  
**FILED**

**DEC 27 1943**

**CHARLES ELMORE CROPLEY**  
CLERK

**IN THE  
SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, A. D. 1943**

**No. 226**

**POLISH NATIONAL ALLIANCE OF THE UNITED  
STATES OF NORTH AMERICA, A CORPORATION,**  
*Petitioner,*

*vs.*

**NATIONAL LABOR RELATIONS BOARD,**  
*Respondent.*

**BRIEF OF PETITIONER ON WRIT OF CERTIORARI TO  
THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT.**

**CASIMIR E. MIDOWICZ,**  
*Attorney for Petitioner.*

*Of Counsel:*  
**EWART HARRIS.**





## INDEX

---

	PAGE
Opinion below .....	1
Jurisdiction .....	1
Statement of the case.....	2
Specification of errors.....	10
Summary of argument.....	11
Propositions of law.....	14
Argument .....	17

### CASES CITED.

Apex Hosiery Co. v. Leader, 310 U. S. 469, 487.....	16, 34
Associated Press v. N.L.R.B., 301 U. S. 102, 125.....	31
Blumenstock v. Curtis Publishing Co., 252 U. S. 436, 442 .....	15, 25
Briggs v. Bankers Acc. Ins. Co., 214 Ill. App. 181, 187 .....	14
Hooper v. California, 155 U. S. 648, 655.....	15, 27
Labor Board v. Jones & Laughlin, 301 U. S. 1, 30.....	28
Liverpool Ins. Co. v. Massachusetts, 10 Wall. 566, 573 .....	15
Modern Woodmen v. Mixer, 207 U. S. 544, 551.....	19
National Union v. Marlow, 74 Fed. 775, 778.....	14, 19
N. Y. Life Ins. Co. v. Cravens, 178 U. S. 389, 401.....	15, 25
N. Y. Life Ins. Co. v. Deer Lodge County, 231 U. S. 495, 509 .....	15, 23, 26, 30
Noble v. Mitchell, 164 U. S. 367.....	15
Northwestern Life Ins. Co. v. Wisconsin, 247 U. S. 132, 138 .....	14, 18

## TABLE OF CASES CITED (continued).

Nutting v. Massachusetts, 183 U. S. 553.....	15
Paul v. Virginia, 8 Wall. 168.....	15, 22
People v. Commercial Ins. Co., 257 Ill. 92, 100.....	14
Peterson v. Manhattan Life Ins. Co., 244 Ill. 329, 337	14
Philadelphia Fire Assn. v. New York, 119 U. S. 110, 118 .....	15
Popovici v. Agler, 280 U. S. 379, 383.....	16, 34
Royal Arcanum v. Behrend, 247 U. S. 394, 399.....	14, 19
Schechter Corp. v. U. S., 295 U. S. 495, 546.....	20
Western Live Stock v. Bureau of Revenue, 303 U. S. 250 .....	15, 24

## STATUTES AND TEXTBOOKS.

Congressional Record, 74th Cong., 1st Sess., Vol. 79, part 9, pp. 9684, 9699.....	16, 33
Cooley on Constitutional Law (4th Ed. 1931), 83, 84..	15, 26
Couch Cyc. of Insurance Law (1929 Ed.) 609.....	14, 18
Illinois Insurance Code, Art. XVII, Ch. 73 Ill. Rev. Stat. 1941, Secs. 296, 314.....	14, 18, 20, 21
T. N. E. C. Report.....	16

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943

---

 No. 226
 

---

POLISH NATIONAL ALLIANCE OF THE UNITED  
STATES OF NORTH AMERICA, A CORPORATION,  
*Petitioner,*  
*vs.*  
NATIONAL LABOR RELATIONS BOARD,  
*Respondent.*

---

 BRIEF FOR PETITIONER.
 

---

Opinion Below.

Reported in 136 Fed (2nd) 175.

## Jurisdiction.

1. The Judgment of the Circuit Court of Appeals for the Seventh Circuit enforcing the order of the National Labor Relations Board was entered June 5th, 1943, upon petition of Polish National Alliance for review of the order, and cross petition of the Board for enforcement. The petition for Review was filed under Sec. 160(f) Title 29 U. S. Code (1940 Ed.). Decree of enforcement was entered on

June 22, 1943. Certiorari was granted on October 11th, 1943, on petition of Polish National Alliance.

2. Petitioner is a fraternal benefit society, organized as a not for profit corporation under the laws of the State of Illinois, with its head office in Chicago, Illinois.

3. Jurisdiction is invoked under Sec. 347 A, Title 28, U. S. Code (1940 Ed.).

### **STATEMENT OF THE CASE.**

#### **The Pleadings.**

A complaint was issued March 9, 1942, by the National Labor Relations Board (amended March 12, 1942) (R. 41), against petitioner, Polish National Alliance of the United States of North America, charging that petitioner is a fraternal benefit society, incorporated under the laws of the State of Illinois, with its main office in Chicago; and stating that it was engaged in the operation of a death, disability and accident insurance business, the publication of a weekly and a daily newspaper and in the investment of funds in real estate and securities.

The complaint alleged that petitioner was licensed to conduct an insurance business in twenty-six states of the United States, in the District of Columbia and in Manitoba, Canada. That it writes insurance, collects premiums and pays out benefits in all the states and territories in which it is licensed. That it had investments throughout the United States in stocks, bonds and mortgages and real estate.

It stated that Office Employees' Union No. 20732 A.F. of L. is a labor organization within the meaning of Section 2 (5) of the Act.

The complaint set out what it alleged to be an appropriate bargaining unit, including several classes of office employees and excluding others; and stated that on or about March 26, 1941, a majority of such unit selected the Union as their representative for collective bargaining, but petitioner refused to bargain collectively with the Union, thereby violating Sec. 8(5) of the Act relating to unfair labor practices (R. 42).

It was charged that one Anna Owsiak had been discharged for Union activities. That a strike began October 7, 1941 and continued until January 7, 1942,—provoked and prolonged by petitioner. That one Henry Ziolkowski on or about October 10, 1941, who had gone out on strike, asked reinstatement and was refused it. That twenty-six strikers also asked reinstatement and were refused.

The acts charged were alleged to have a close relation to interstate commerce and to tend to cause labor disputes "burdening and obstructing commerce and the free flow of commerce."

The answer filed by petitioner (R. 46) admitted that it was a fraternal benefit society incorporated under the laws of the State of Illinois, with its main office in Chicago. Petitioner denied that it was engaged in the operation of a death, disability and accident insurance business and in the publication of a weekly and a daily newspaper. It admitted its investment of funds and that it is licensed to do business in twenty-six states, the District of Columbia and Manitoba, Canada.

Petitioner denied that it wrote insurance, collected premiums and paid out benefits other than as a fraternal benefit society organized under the laws of the State of Illinois. It denied that it conducted an "insurance business" or published a newspaper other than the weekly official organ of the society, to circulate among the members

whose subscription was included in their membership fee. It stated that the daily newspaper referred to, was published by a separate corporation whose capital stock was owned by the directors of petitioner *ex officio* (R. 48).

The answer denied that petitioner was engaged in interstate commerce within the National Labor Relations Act (R. 48). It stated that petitioner is a non-profit organization with purposes set out in the Preamble to its Constitution, which were to form "a more perfect union of the Polish people in this country; insuring to them a proper moral, intellectual, economic and social development; preserving the mother tongue as well as the national culture and customs; and promoting more effectually all movements tending to secure by all legitimate means the restoration and preservation of the independence of the Polish territories in Europe." Its stated objects, in addition, were to "promote fraternalism among its members, and provide death, disability, accident and other benefits to its members and their beneficiaries."

The answer denied that an appropriate bargaining unit was set out in the complaint as amended and alleged that certain persons and classes sought to be excluded should be included in the unit (R. 48). It denied that the Union had a majority in an appropriate unit. It admitted its refusal to bargain, saying that it was not engaged in interstate commerce and therefore not within the Act.

The unfair labor practices were denied, also the discriminatory discharge of Anna Owsiak, the alleged coercion and interference, and the refusal to reinstate Henry Ziolkowski and the other strikers. It denied that its conduct led to labor disputes which burdened or obstructed commerce and the free flow of commerce (R. 49).



### The Evidence.

The charter of petitioner (R. 140, 5) shows that it is an Illinois corporation, organized as a fraternal benefit society without capital stock, for the sole benefit of its members and their beneficiaries, and not for profit, having a lodge system with ritualistic form of work and a representative form of government. The Preamble to its Constitution states (R. 52):

"When the Polish Nation, notwithstanding heroic sacrifices and sanguinary struggles, lost its independence, and by decree of Providence became doomed to triple bondage and was divested of its rights to life and development by force of the invaders, that portion thereof, most severely wronged, voluntarily, preferring exile to cruel bondage in the Motherland, sought refuge under the guidance of Kosciuszko and Pulaski, in the free land of Washington, and settling here, found Hospitality and Equal Rights.

These valiant pilgrims, ever mindful of their duties to their newly adopted country and their own nation, founded the Polish National Alliance of the United States of North America for the purpose of forming a more perfect union of the Polish people in this country; insuring to them a proper moral, intellectual, economic and social development; preserving the mother tongue as well as the national culture and customs; and promoting more effectually all movements tending to secure, by all legitimate means, the restoration and preservation of the independence of the Polish territories in Europe."

Petitioner is organized into 1817 lodges, which meet at least once a month. Its supreme legislative and governing body is the Convention which meets at least once in four



years. Delegates to the Convention are selected from groups of lodges, each group forming what is known as a Council, of which there are approximately 190 (R. 13, 25, 26, 88, 91, 105).

The elective officers are the Censor, Vice-censor, and Commissioners, who together form the judicial, appellate and supervisory body in the Alliance known as the Supervisory Council. There are also elected a President, two Vice-Presidents, General Secretary, Treasurer and Board of Directors. The Board of Directors is the executive and managing body of the Alliance (R. 26, 37, 40, 71, 73, 74, 75, 76).

On December 31, 1941, petitioner had in force 272,897 benefit certificates of the value of \$159,683,583. It owned assets of \$30,090,835 in cash and bonds issued by the U.S. and by the several States and political subdivisions thereof, and by Canada and Poland; also stocks, mortgages and real estate in several States. Its income during 1941 was \$5,717,344 of which \$3,732,364 was received from members, and \$1,690,250 from investments. In 1941 benefits paid amounted to \$1,845,126, and sums spent in charitable, educational and patriotic activities in 1941 amounted to \$252,210.03 (R. 105, 134).

The operations of the Alliance, beneficiary and fraternal, are centered in the Home Office in Chicago, Illinois.

The Directors of the Alliance are *ex officio* stockholders of Alliance Printers and Publishers Inc. an Illinois corporation with its principal office in Chicago, which publishes the weekly organ of the Alliance, the subscription to which is included in the membership dues; and a daily paper which is put on sale in Illinois, Indiana and Michigan (R. 47, 135).

Petitioner has spent \$7,109,786.87 since its organization for charitable, educational and fraternal activities among its members (R. 167). Some of the principal items of this expenditure are: Educational \$3,620,862.90; National purposes \$2,388,959.52; Relief \$698,042.94; Commissions and Departments \$316,568.02 (Immigration Commission, Help to Immigrants, etc); Civil manifestations and memorials \$83,353.49 (R. 168, 169, 170).

Office Employees Union No. 20732 is a labor organization affiliated with the American Federation of Labor. It admits to membership office employees of petitioner's Chicago office (R. 181).

Petitioner refused recognition to the Union, stating that it was not subject to the jurisdiction of the National Labor Relations Board (R. 21). A strike was called. In certain communications from the Head Office to the lodges and councils petitioner charged that certain of the strikers were seeking revenge on the present officers because of their defeat at the last Convention when the "leader of the dissatisfied employees was one of the candidates" for office of Secretary General. In one of the issues of the weekly organ of the Alliance it was stated over the signature of certain officers that the Directors could not permit persons who had nothing in common with the Polish National Alliance and Polish traditions to decide who was qualified for work in the offices of the Alliance; and that a labor union was not necessary in a fraternal benefit society, organized for the mutual benefit of all; and that, in any event, the question was one properly to be passed upon by the Convention as the "Supreme Governing body of our Society" (R. 127). The article declared that in the opinion of the signers the Alliance was not subject to the provisions of the National Labor Relations Act.

### **The Order and Decree of Enforcement.**

The hearing before the Trial Examiner resulted in an intermediate report, recommending an order as prayed in the complaint as amended, which, upon exceptions and oral argument, was sustained in great part (R. 175, 182).

The Board held that "Although the respondent (petitioner here) has been organized as a non-profit corporation and its charter emphasizes the cultural and social purposes of its incorporation, these factors are not conclusive of the question of our jurisdiction; the determining point is what the corporation does. The activities of the respondent in issuing insurance benefit certificates and its attendant investments mark it as an insurance company. We have previously held that a company engaged in the insurance business, through similar extensive activities, is engaged in commerce within the meaning of the Act. Moreover, the fact that the respondent may not be organized for "profit" does not place it beyond our jurisdiction. We find that the respondent is engaged in commerce within the meaning of the Act" (R. 190).

The Board found that petitioner's activities "have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce" (R. 213).

There was an order requiring petitioner to cease and desist from refusing to bargain with the Union; and directing other action to be taken consonant with this requirement (R. 217).

A petition for review was immediately filed by the Polish National Alliance. The Board answered and also requested enforcement of the order. The Circuit Court of

Appeals on June 23, 1943 entered an order of enforcement which is stayed, pending certiorari (R. 221, 224, 225).

The Circuit Court of Appeals found petitioner to be engaged in the insurance business, and held that *Paul v. Virginia* and its successors were not decisive because "in each of them the Court was considering the power of the State to tax or regulate, and not the power of Congress under the Commerce Clause" (R. 228-240).

Certiorari was granted on October 11, 1943, limited to the first five questions presented in the petition. These questions are:

1. Is an Illinois fraternal benefit society, operating in the several States from its head office in Chicago, Illinois engaged in commerce within the meaning of the commerce clause of the Constitution of the United States?
2. Is a fraternal benefit society incorporated under the Laws of the State of Illinois an insurance company, and its operations in issuing benefit certificates the business of insurance?
3. Is insurance "commerce" within the meaning of the commerce clause of the Constitution of the United States?
4. Does the use of the mails and other means of interstate communication and transportation incidentally to the issuance of benefit certificates and the investment activities of a fraternal benefit society bring the society within the provisions of the National Labor Relations Act as thereby "affecting commerce", so that a labor dispute with its employees may be considered as "burdening and obstructing commerce and the free flow of commerce"?
5. Does the incidental use of the mails and of interstate means of communication and transportation by any organization whose primary activity is not commerce within the

meaning of the Commerce Clause of the Constitution of the United States, bring such organization within the provisions of the National Labor Relations Act, as thereby "affecting commerce" and a labor dispute with its employees as "burdening and obstructing commerce and the free flow of commerce"?

In view of the limitation of the Court's consideration to these questions only, there has been omitted from the record the evidence as to the alleged unfair labor practices and the evidence upon the question as to whether or not the Labor Union had a majority of an appropriate bargaining unit; and there will be no discussion of these matters by the petitioner.

### **Specification of Errors.**

The Circuit Court of Appeals erred:

1. In holding that petitioner, a not for profit fraternal benefit society organized under the laws of Illinois, is engaged in the business of insurance.
2. In holding that insurance is commerce within the meaning of the National Labor Relations Act.
3. In holding that the fraternal benefit operations of petitioner affected commerce within the meaning of the National Labor Relations Act, and that a labor dispute between petitioner and its employees burdened and obstructed commerce and the free flow of commerce.
4. In holding that use of the mails and of the means of interstate communication and transportation brought petitioner within the purview of the National Labor Relations Act, as having affected commerce by such use; whether petitioner has otherwise engaged in commerce or not.

5. In entering the enforcement decree herein, and each provision thereof.
6. In refusing to dismiss the complaint as amended.

### Summary of Argument.

#### I.

Petitioner is a fraternal benefit society, organized under the laws of the State of Illinois as a not for profit corporation, having a representative form of government and a lodge system with ritualistic form of work. The issuance of benefit certificates to its members is not engaging in the insurance business, as found by the Court of Appeals. Petitioner is not in commerce, nor do its activities affect commerce, or a dispute with its employees burden commerce, or the free flow of commerce, so as to bring it within the National Labor Relations Act.

The holding of the Circuit Court of Appeals that a fraternal benefit society is engaged in the business of insurance is counter to the law in Illinois and other States. These societies in Illinois are organized and operate under a special Article of the Insurance Code, and are there declared to be charitable and benevolent institutions.

The aims of a fraternal benefit society are religious, cultural and fraternal. They are not permitted to make a profit on their benefit certificates, which are considered incidental to the main purposes of their creation. Without the profit motive there is no commerce in the Constitutional sense. This is recognized by this Court in the *Associated Press* case 301 U.S. 123, 5, where it is stated that although the Press Association was a non-profit organization its members were all "engaged in a commercial business for profit."



## II.

Insurance is not commerce. The Court of Appeals in holding that petitioner was engaged in the insurance business, and was therefore engaged in commerce, or, in any event, its activities affected commerce, refused to follow the long line of decisions in this Court beginning with *Paul v. Virginia*, 8 Wall. 168, that insurance is not commerce. The cases hold that a policy of insurance is not a commodity and therefore is not the subject of interstate commerce.

## III.

That which in its consummation is not commerce, does not become commerce between the States because incidental transportation or the use of the mails takes place in connection therewith.

The Court of Appeals, in holding, in effect, that mere use of the mails or other means of interstate communication incidentally to the issuance of fraternal benefit certificates, was alone and of itself sufficient to bring any organization, whether conducted for profit or not, within federal regulation, obliterates all distinction between what is commercial in the Constitutional sense and what is merely incidental to operations which in their consummation cannot be regarded as commercial. Such a rule brings religious, philanthropic, cultural and other organizations, using the mails and interstate communication, within federal regulation, and within the operation of the Act in question.

## IV.

At the time of the enactment of the National Labor Relations Act insurance had long been held by this Court

not to be commerce within the meaning of the Commerce Clause. Congress did not challenge this construction and specifically include insurance companies within the coverage of the Act. Their regulation, therefore, remains with the States, and they are not within the Act in question.

This Court has held that insurance is not commerce, the making of the contract of insurance is not engaging in commerce, and the policy of insurance is not an instrumentality of commerce.

The "enactment by Congress of legislation which implicitly recognizes the judicial construction" of a Constitutional provision or a former Act of Congress, "is persuasive legislative recognition that the judicial construction is the correct one" (*Apex Hosiery* case, 310 U. S. 469, 487).

#### CONCLUSION.

The question is one of the constitutional power of Congress to regulate insurance, since insurance has been declared to be the making of a contract, and not a commodity.

The question is also one of statutory construction, whether Congress included insurance within the definition of commerce contained in the National Labor Relations Act.

Petitioner, moreover, is a charitable and benevolent institution not engaged in the pursuit of profit, but rather of fraternal, cultural and patriotic aims. It is not engaged in commerce within the meaning of the Commerce Clause or the National Labor Relations Act. The judgment and decree of the Court of Appeals should be reversed, the order of the Board set aside and the amended complaint dismissed.

## PROPOSITIONS OF LAW.

---

### I.

**Petitioner is a fraternal benefit society, organized under the laws of the State of Illinois as a not for profit organization, having a representative form of government and a lodge system with ritualistic form of work. The issuance of benefit certificates to its members is not engaging in the "insurance business" as found by the Circuit Court of Appeals. Petitioner is not in commerce, nor do its activities affect commerce, or a dispute with its employees burden commerce, or the free flow of commerce so as to bring it within the National Labor Relations Act.**

Article XVII Illinois Insurance Code Secs. 296, 314, (Ill. R. S. 1941 Ch. 73).

*People v. Commercial Insurance Co.*, 247 Ill. 92, 100.

Vol. 1 Couch Cyc. of Ins. Law (1929 Ed.) p. 609.

*National Union v. Marlow*, 74 Fed. 775, 776.

*Peterson v. Manhattan Life Ins. Co.*, 244 Ill. 329, 337.

*Royal Arcanum v. Behrend*, 247 U. S. 394.

*Briggs v. Bankers Acc. Ins. Co.*, 214 Ill. App. 181, 187.

*Modern Woodmen v. Mixer*, 267 U. S. 544, 551.

*Northwestern Life Ins. Co. v. Wisconsin*, 247 U. S. 132, 138.

## II.

**Insurance is not commerce.**

*Paul v. Virginia*, 8 Wall. 168.

*Western Live Stock v. Bureau of Revenue*, 303 U. S. 250.

*Blumenstock v. Curtis Publishing Co.*, 252 U. S. 436, 442.

*N. Y. Life Ins. Co. v. Cravens*, 178 U. S. 389, 401.

*Liverpool Ins. Co. v. Massachusetts*, 10 Wall 566, 573.

*Noble v. Mitchell*, 164 U. S. 367.

*Philadelphia Fire Ins. Assn. v. New York*, 119 U. S. 110, 118.

*Nutting v. Massachusetts*, 183 U. S. 553.

## III.

The use of the mails and other means of interstate communication and transportation by petitioner in its operations as a fraternal benefit society is not engaging in interstate commerce. That which in its consummation is not commerce, does not become commerce among the States because incidental transportation takes place.

*Hooper v. California*, 155 U. S. 648, 655.

*N. Y. Life Ins. Co. v. Deer Lodge County*, 231 U. S. 495, 509.

Cooley on Constitutional Law (4th Ed. 1931) pp. 83, 84.

## IV.

At the time of the enactment of the National Labor Relations Act insurance had repeatedly been held by this Court not to be commerce within the meaning of the Commerce Clause. Congress did not challenge this construction by specifically including insurance companies within the coverage of the Act. The regulation of insurance companies, therefore, remains with the States, and they are not within the Act in question.

*Apex Hosiery Co. v. Leader*, 310 U. S. 469, 487.

*Popovici v. Agler*, 280 U. S. 379, 383.

Final Report T. N. E. C. p. 41 (Doc. 35, 77th Cong. 1st Sess.).

Congressional Record 74th Cong. 1st Sess. Vol. 79  
Part 9 pp. 9684, 9699.

## **ARGUMENT.**

---

### **I.**

**Petitioner is a fraternal benefit society. It is not engaged in commerce, nor, by issuing benefit certificates to its members is it engaged in the business of insurance. It is a not for profit corporation, declared by the law of Illinois which created it, to be a charitable and benevolent institution.**

The principal purposes of the Polish National Alliance, as declared by its Constitution, are to "form a more perfect union of the Polish people in this Country; insuring to them a proper moral, intellectual, economic and social development; preserving the mother tongue as well as the national culture and customs and promoting more effectually all movements tending to secure by all legitimate means the restoration and preservation of the independence of the Polish territories in Europe" (R. 52).

Since its organization up until the year 1941 petitioner spent \$7,109,786.87 for charitable, educational and fraternal activities (R. 167) and during the same period paid out in benefits \$38,076,756.73. In 1941 petitioner paid in benefits \$1,845,126 (R. 105) and disbursed in charity and for education, Polish national causes and American Red Cross \$252,210.03. Petitioner's (Respondent below) Exhibit No. 6 (R. 167) shows that the principal items of expenditure were upon Polish relief, the Alliance College and Educational Department, and the Youth Department of the Alliance which is concerned with providing recreation, physical education and culture for the young. Large sums were also spent in the relief of Polish people in Poland and in the United States.



The Illinois Insurance Code sets apart an entire Article for the regulation of fraternal beneficiary societies (Ill. Rev. Stat. 1941, Chap. 73, Article XVII). Section 314 of this Article declares:

"Every fraternal benefit society organized, licensed or operating under this Code is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax, other than taxes on real estate and office equipment."

It is under the provisions of this Article that petitioner, which was organized under the laws of Illinois as a not for profit corporation without capital stock, is operating. It is carried on for the sole benefit of its members and their beneficiaries under benefit certificates issued by petitioner. It has a lodge system with ritualistic form of work and a representative form of government. There are 1817 lodges in the Alliance, which meet once a month. Its supreme legislative and governing body is an elective body called the Convention, which meets once each four years (R. 105).

In *Vol. 1 Couch Cyc. of Insurance Law* (1929 Ed.) page 609, it is said:

"The statutory distinction is that insurance companies are organized for ordinary business purposes, for investment and for the benefit of credit, as well as for the protection of the family, whereas fraternal Orders and benefit societies are not organized for the purpose of profit. Certificates in mutual benefit societies do not constitute insurance within the meaning of provisions against other, over or double insurance."

In *Northwestern Life Ins. Co. v. Wisconsin*, 247 U.S. 132, 138, the Court say: "We think the differences (be-

between an insurance company and a fraternal benefit society) are plain. The fraternal and beneficial features are wanting in organizations like that of Northwestern Company."

In *Royal Arcanum v. Behrend*, 247 U.S. 394, the Court say on page 399:

"The difference between ordinary life insurance and that furnished by the fraternal benefit societies has been universally recognized in legislation and is a matter of common knowledge."

In *Modern Woodmen v. Mixer*, 267 U.S. 544, 551, Mr. Justice Holmes, speaking for the Court, said:

"The indivisible unity between members of a corporation of this kind in respect of the fund from which their rights are to be enforced, and the consequence that their rights must be determined by a single law, is elaborated in *Supreme Council of the Royal Arcanum v. Green*, 237 U.S. 531, 542. The act of becoming a member is something more than a contract, it is entering into a complex and abiding relation, and as marriage looks to domicile, membership looks to and must be governed by the law of the State granting the incorporation."

In *National Union v. Marlow*, 74 Fed. 775, 778, 779, the Court, speaking of fraternal beneficiary associations, say:

"The term 'fraternal' can properly be applied to such an association for the reason that the pursuit of a common object, calling or profession usually has a tendency to create a brotherly feeling among those who are thus engaged. It (the Legislature) has declared in effect, or intended so to declare, that when a certain number of persons, among whom some natural bond of sympathy or interest existed, should form

an association for self improvement or for the purpose of aiding one another and strengthening the bond of union, such association might be consolidated into a corporation, and incidentally, to further the ends of its creation, might provide for the relief of members and their families in case of sickness or death by levying assessments and issuing benefit certificates.

"We find nothing in the various sections of the Missouri statute . . . which justifies the conclusion that the lawmaker intended to create a class of corporations, termed 'fraternal-beneficial' for the sole and only purpose of doing an insurance business, provided that such corporations transacted business in a certain way, that is, through the agency of local councils or lodges. The statute shows, as we think, very plainly that a fraternal-benefit society can only become a body politic and corporate by satisfying the court to whom its petition for incorporation is addressed that it is engaged in some work, or purposes to become engaged, which is distinctly of a fraternal and beneficial nature. When this point is established to the satisfaction of the court by an inspection of its articles of association and the society becomes duly incorporated, the statute then confers upon it the right to make provision for the relief of its sick and disabled members and their families. This right, however, is merely incidental to the main purpose of its creation."

The Illinois Code provides (Art. XVII, Sec. 296) that "lawful social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society, and the mode in which its corporate powers are to be exercised."

The Code, which requires that the dues be sufficient to maintain the society in a financially sound position, and which makes provision for the usual State supervision of its investments and expenditures, gives the society the right to issue various forms of certificates,—term, life, endowment and annuity. The Code provides that the contract between the society and its members shall be the benefit certificate, which shall include in its terms the Constitution and bylaws of the organization. The society is permitted to expend a portion of its funds through patriotic, relief, or other similar channels (Sec. 293, Art. XVII). Petitioner in the year 1941 paid out benefits in the sum of \$1,845,126.33 (R. 105), and disbursed for relief, education, Polish national purposes, American Red Cross, and the like, the sum of \$252,210.03 (R. 170).

That the nature and effect of the benefit certificate is similar to that of the insurance policy does not make of the fraternal benefit society an insurance company, as held by the court below. Though the Polish National Alliance has grown during the more than half century of its existence into "the largest fraternal organization in the world of Americans of Polish descent" yet, like all other fraternal benefit societies it will always be limited to those who possess the qualifications for membership set out in its Constitution and bylaws, which in the case of the petitioner is confined to persons of a certain national descent who are willing to unite with others of like qualifications in the pursuit of the aims of the Alliance. This union and the pursuit of these aims are the primary purposes of the Alliance and the reasons for its existence.

These aims are not commercial. The seeking after profit is not even incidental to these aims. The Alliance is forbidden by its charter and the laws which give it

existence to engage in commercial operations in which the element of profit is present. The issuance of benefit certificates is but incidental to the main objects of its existence, permitted by the laws of Illinois as an encouragement of thrift and a means of protection of the widows and orphans of the members of the society, and of the members themselves who become aged or disabled.

Petitioner, therefore, is not engaged in commerce or in the business of insurance.

## II.

### Insurance is not commerce.

This court in an unbroken line of decisions has held that insurance is not commerce, and the insurance policy or contract of insurance is not an article of commerce. These decisions the Circuit Court of Appeals refused to follow.

In *Paul v. Virginia*, 8 Wall. 168, the Court declared:

“Issuing a policy of insurance is not a transaction of commerce. The policies are simple contracts. . . . These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another and then put up for sale. . . . Such contracts are not interstate transactions, though the parties may be domiciled in different states.”

The reasoning of *Paul v. Virginia* was thenceforward subject to constant attack, principally by insurance companies which sought to be relieved from the burdens of State taxation and regulation upon the ground that these

were burdens upon interstate commerce. This was markedly the case in *New York Life Insurance Company v. Deer Lodge County*, 231 U.S. 495, involving a State tax on insurance corporations. The complaint of the Company is summarized by the Court on page 499, wherein the Company had called attention to its huge size, and the international ramifications of its business, "in all of the States of the United States and with persons residing in every country of the civilized world," and declared that it had insurance in force in Montana alone, of over ten million dollars, calling for annual premiums in excess of three hundred and forty thousand dollars. "This total insurance" it said, "is made up of policies averaging two thousand dollars each, and these are subject to sale, assignment and transfer and are used for collateral security and other commercial purposes and are valuable for such purpose and for other general purposes of trade and commerce." Such transactions, it was alleged by the Company, were interstate commerce within the meaning of the Commerce Clause.

The Court ruled otherwise: first, upon the ground that *Paul v. Virginia* had been consistently followed and its doctrine had become established law. The Court say (p. 502):

"If we consider these cases numerically (*Paul v. Virginia* and its successors), the deliberation of their reasoning, and the time they cover, they constitute a formidable body of authority and strongly invoke the sanction of the rule of *stare decisis*. This we especially emphasize, for all of the cases concerned, as the case at bar does, the validity of State legislation, and under varying circumstances the same principle was applied to all of them. For over forty-five years they have been the legal justification for such legislation. To reverse the cases, therefore, would require



us to formulate a new rule of constitutional inhibition upon the States and which would compel a change of their policy and a readjustment of their laws. Such result necessarily urges against a change of decision."

The Court then proceeds to analyse the cases at considerable length, and declares (p. 507):

"It was also urged that modern life insurance had taken on essentially a national and international character, and that when *Paul v. Virginia* was decided, the business was to a great extent local, that is, conducted through the domestic stock companies. The great and commanding organizations of the present day had hardly begun the amazing development which has made them the greatest associations of administrative trusts in the business world. . . .

"These contentions were earnestly made; the reply to them deliberately meditated and its extent fully appreciated. The ruling in *Paul v. Virginia* and other cases applied. . . . We . . . repeated that the business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. . . . The decision of the cases is that the contracts of insurance are not commerce at all, neither state nor interstate" (p. 509).

In *Western Live Stock v. Bureau of Revenue*, 303 U. S. 250, involving a state tax upon advertising, the Court say:

"That the mere formation of a contract between persons in different States is not within the protection of the commerce clause, at least in the absence of Congressional action, unless the performance is within its protection, is a proposition no longer open to question" (citing *Paul v. Virginia* and other cases).

In *Blumenstock v. Curtis Publishing Co.*, 352 U. S. 436, 442, it is declared:

"The advertising contracts did not involve any movement of goods or merchandise in interstate commerce, or any transmission of intelligence in such commerce.

(This case is) within that line of cases in which we have held that policies of insurance are not articles of commerce, and that the making of such contracts are a mere incident of commercial intercourse."

In *New York Life Insurance Co. v. Cravens*, 178 U. S. 389, 401, the Court say:

"Is the statute (of Missouri, governing insurance policy provisions) an attempted regulation of commerce between the States? In other words, is mutual life insurance commerce between the States.

That the business of fire insurance is not interstate commerce is decided in *Paul v. Virginia* (and other cases). That the business of marine insurance is not is decided in *Hooper v. California*. In the latter case it is said that the contention that it is, 'involves an erroneous conception of what constitutes interstate commerce.'

We omit the reasoning by which that is demonstrated, and will only repeat: 'The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. The making of such a contract is a mere incident of commercial intercourse, and in this respect there is no difference whatever between insurance against fire and insurance against the "perils of the sea." And, we add, or against the uncertainty of man's mortality.'

## III.

The use of the mails and other means of interstate communication and transportation by petitioner as a fraternal beneficiary society operating in the several states; and its investment of funds in real and personal property situated in different states, do not, of themselves, bring petitioner within the purview of the National Labor Relations Act, as being engaged in commerce, or in activities which affect the flow of commerce.

"That which in its consummation is not commerce, does not become commerce among the States because incidental transportation takes place," is said by Cooley in his work on Constitutional Law (4th Ed. 1931) on page 84.

The same doctrine was announced by this Court in *N. Y. Life Ins. Co. v. Deer Lodge County*, 231 U. S. 495, 509, in these words:

"There is necessarily a great and frequent use of the mails (by the insurance company), and this is elaborately dwelt on by the insurance company in its pleading and argument, it being contended that this, and the transmission of premiums, and the amounts of the policies constitute a 'current of commerce among the States.' This use of the mails is necessary, it may be to the centralization of the control and supervision of the details of the business; it is not essential to its character. . . .

The number of transactions do not give the business any other character than magnitude. Nor, again, does the use of the mails determine anything. That (agents and applicants for insurance) may live in different States and hence use the mails for their communication does not give character to what they do; and cannot

make a personal contract the transportation of commodities from one State to another."

In *Hooper v. California*, 155 U. S. 648, the State had required foreign insurance companies to give bond before being allowed to do business within the state. This requirement was attacked as a burden upon interstate commerce. The Court, after citing *Paul v. Virginia*, declared that the State's authority to regulate foreign insurance companies, doing business within its borders rests upon the "difference between interstate commerce or an instrumentality thereof on the one side, and the mere incidents which may attend the carrying on of such commerce, on the other. This distinction," says the Court, "has always been carefully observed, and is clearly defined by the authorities cited. If the power to regulate interstate commerce applied to all the incidents to which said commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the States; and would exclude State control over many contracts purely domestic in their nature."

The use of the mails and other means of interstate communication is common to most individuals and to organizations of every type,—commercial, philanthropic, religious, political or other. To make such use a test of the applicability of the Commerce Clause to, and consequent Congressional regulation of such individual or organization, is to make the Commerce Clause of universal application to the diverse affairs of practically all of the citizens of the different States.

To say that the use of the mails and other means of interstate communication and transportation is, of itself, to engage in commerce and to declare that a lessened use

of such facilities, caused by a strike of employees of the individual or organization in question, is to "affect commerce" within the meaning of the National Labor Relations Act, is to obliterate all distinction between those who are admittedly engaged in interstate commerce in the generally accepted sense, as being in trade or business for a profit and using interstate facilities of communication in the furtherance of their business; and those who, like petitioner, use such facilities in the prosecution of their social, cultural and patriotic aims, and in their consequent permitted activities in the issuance of benefit certificates to their members as a charitable and benevolent institution, without profit accruing therefrom.

Church organizations and other religious and cultural bodies, political organizations and similar bodies whose activities are nation-wide would be subject to federal regulation under the Act in question and other Acts based upon the powers contained in the Commerce Clause, if mere use of interstate communication is to be declared the engaging in or affecting of commerce.

Such a result was not intended by Congress. Nor would legislation of such boundless scope be within the Constitutional powers of Congress to enact, for thereby all distinction is abolished between what may properly be the subject of federal control and what is reserved to the States for regulation.

In *Labor Board v. Jones and Laughlin*, 301 U. S. 1, 30, this Court declared:

"The authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction which the Commerce Clause itself establishes, between commerce 'among the several States' and the internal concerns of a State. That distinction between what is national and what is local in the activities of

commerce is vital to the maintenance of our federal system."

To say that a strike in petitioner's home office would affect the volume of mail that petitioner habitually deposits in the postoffice, and obstruct its placing of investments throughout the United States; and hinder the flow of dues from members, is merely to declare the obvious result that would occur in any organization of any kind—religious, charitable, or other,—if a refusal to work by its employees became sufficiently widespread. Yet, it does not follow from such a result, alone, that the organization in question may be declared to be engaged in interstate commerce, and its activities, or, a cessation thereof, so affect commerce as to bring its relations with its employees under the control of the National Labor Relations Act.

In *Schechter Corp. v. United States*, 295 U. S. 495, on page 546, the Court say:

"In determining how far the federal government may go in controlling intrastate transactions upon the ground that they 'affect' intrastate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle. . . . Where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the federal government."



If the issuance of benefit certificates is engaging in the business of insurance, and insurance is not commerce, then petitioner is not engaged in commerce, and the effect upon commerce of its use of the mails is only an indirect result of its engaging in a purely intrastate transaction. But petitioner is not engaged in the business of insurance and its use of the mails and other means of communication is occasioned by its various activities as a fraternal benefit society, and related in no way to commerce except as the instrumentalities of communication are used.

To make the use of such interstate channels of communication a decisive test of the nature of the activities engaged in by an individual or organization, as thereby being commercial, is to lay down an automatic rule of decision which requires no regard to be paid to the essential nature of the organization's or the individual's activities, as to whether they are in fact interstate commerce or not.

As was said above: "The number of transactions do not give the business any other character than magnitude. Nor, again does the use of the mails determine anything." (*N. Y. Life Ins. Co. v. Deer Lodge County*, 231 U. S. 509.)

Petitioner is a charitable and benevolent institution, so created and so declared to be by the law of the State which gave it a charter. It is organized upon a representative basis, and its supreme governing body is an elective one. Its officers and directors are elected by the membership in Convention assembled in the person of their elected delegates. Its members are bound together by the ritual and by the common purposes of the Alliance declared in the Constitution. They meet in numerous lodges for social intercourse and to combine in the pursuit by all lawful means of the declared aims of the Alliance, a principal one of which is the liberation of Poland from the invader.

The true nature of petitioner is to be found in these activities. It is not to be found in the fact that, incidental to these aims and activities, petitioner is permitted to, and does issue benefit certificates to its members for the protection of themselves and their families.

Profit, the essential element of Commerce, is absent from all the purposes and activities of petitioner. Without profit as an aim there is no trade or commerce within the meaning of the Constitution, other than the instrumentalities of commerce themselves. The instrumentalities of commerce,—the mails, interstate means of communication and transportation,—are undoubtedly within the Commerce Clause, but the mere use of them, incidental to the pursuit of the benevolent and charitable and patriotic aims and activities of petitioner does not bring petitioner, or any other like organization, within the meaning of the National Labor Relations Act as being engaged in commerce or affecting commerce, as the term “commerce” is commonly understood, and was so understood at the time of the passage of the Act.

The case of *Associated Press v. N.L.R.B.*, 301 U. S. 103, 125, is not authority to the contrary. Although the Associated Press is a nonprofit organization it is one of the means through which profit is sought by its members. As the Court say on page 125: “It has about 1350 members in the United States, and practically all the newspapers represented in its membership are conducted for profit.”

Petitioner is prohibited by the State of its creation from seeking or making a profit, and is, therefore not engaged in commerce.

## IV.

Commerce, as defined by the National Labor Relations Act does not include insurance. At the time of its enactment, insurance had long been declared by this Court not to be commerce. Congress did not challenge this construction of the Commerce Clause. Insurance, therefore, is not within the purview of the Act.

An examination of the debates upon the bill which was enacted as the National Labor Relations Act, particularly the debate in the House, discloses that the members of the House had the question of the constitutionality of the proposed legislation constantly before them, with reference to its scope. It was contended by the opponents of the bill that the Act would be declared unconstitutional by this Court, or at least, very closely restricted in its operation to those businesses obviously engaged in interstate commerce, and would not be extended to concerns engaged in manufacturing, mining and the like.

That the subsequent decisions of this Court proved the opponents of the bill to have been mistaken may be due as much to misinterpretation by those members of the effect as law and precedent of the cases on which they relied in debate, as to any overruling of them by this Court, except, perhaps, in one instance. Such is not the case as to insurance. An unbroken line of authority, which stands to this day, had declared the doctrine that insurance is not commerce, which fact must be assumed to have been known by the Congress. When, then, Congress defined commerce in the Act it did not include insurance within that term.

In connection with the question of the scope of the bill, this occurred in the debate between Representatives Cox

and Marcantonio (Cong. Record, 74th Cong., 1st Sess., Vol. 79, Part 9, page 9699):

*“Mr. Cox:* Is not the main purpose of this Bill to extend Federal control through the use of the commerce power of the Constitution by legislative definition and otherwise, to the point of taking out of State control that which has heretofore been regarded as a purely domestic activity?

*Mr. Marcantonio:* Not necessarily; that is not the situation at all. We are trying to use whatever power Congress has under the Commerce Clause. The language of the bill is constitutional. Only when its application would be contrary to the definition of ‘interstate’ in the *Schechter* case would it be declared unconstitutional. Each case would stand on its own state of facts.”

Representative Connery, whose name was on the bill, also declared (p. 9684):

*“The Wagner-Connery bill is built upon those decisions of the Supreme Court which say that a labor dispute, a strike which interferes with the free flow of commerce, is subject to regulation by the Congress of the United States under its interstate commerce powers. So we do not have any worries or fears about the constitutionality of this bill.”*

With the debate being given this form, both by the foes and the supporters of the bill, it is obvious that if the question had been raised as to whether or not insurance was included in the definition of commerce contained in the bill, the answer would have been in the negative. It was clearly the purpose of the supporters of the proposed legislation to write a bill that would conform to the definitions of Commerce theretofore announced by this Court.

In *Apex Hosiery v. Leader*, 310 U.S. 495, the Court say that:

"The unanimity with which foes and supporters of the bill spoke of its aims as the protection of free competition, permit use of the debates in interpreting the purpose of the Act."

This Court also said in the *Apex* case, on page 487:

"Whether labor organizations and their activities are wholly excluded from the Sherman Act is a question of statutory construction, not constitutional power. The long time failure of Congress to alter the Act after it had been judicially construed, and the enactment by Congress of legislation which implicitly recognizes the judicial construction as effective, is persuasive of legislative recognition that the judicial construction is the correct one."

In the definition of commerce which finally was embodied in the National Labor Relations Act there was no challenge to the decisions of this Court that insurance is not commerce, and no attempt was made, therefore, to include insurance within the scope of the Act.

In *Popovici v. Agler*, 280 U. S. 379, 383, which arose upon an application by a vice-consul for a writ of prohibition to restrain a divorce proceeding in a State Court, the petitioner relied on Article 3, Section 2 of the Constitution, which provides among other things, that jurisdiction of:

"Suits and proceedings against Ambassadors or other public ministers or their domestics, or domestic servants, or against consuls or vice-consuls,"

shall be in the United States Court, exclusive of the Courts

of the several states. This Court, speaking through Mr. Justice Holmes, said (p. 383):

"The language so far as it affects the present case is pretty sweeping, but like all language it has to be interpreted in the light of the tacit assumptions upon which it is reasonable to suppose that the language was used. It has been understood that 'the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States,' and the jurisdiction of the Courts of the United States over divorces and alimony always has been denied."

"The words quoted from the Constitution do not of themselves and without more exclude the jurisdiction of the State. The statutes . . . do not affect the present case if it be true, as has been unquestioned for three-quarters of a century that the Courts of the United States have no jurisdiction over divorce. If when the Constitution was adopted the common understanding was that the domestic relations of husband and wife, parent and child, were matters reserved to the States, there is no difficulty in construing the instrument accordingly, and not much in dealing with the statutes. Suits against consuls and vice-consuls, must be taken to refer to ordinary civil proceedings and not to include what formerly have belonged to the ecclesiastical Courts."

### CONCLUSION.

The question of whether insurance is or is not commerce has been up until now a question of constitutional power. The Court has declared that insurance is without the scope of the commerce clause as not being a commodity, but the making of a contract. The logic of *Paul v. Virginia* and of *New York Life Ins. v. Deer Lodge*



*County* is still good, and insurance will only be brought within the operation of federal regulatory legislation, if at all, by the incidents surrounding the making of the contract of insurance—the use of the mails and the investment of funds in different states, which are also incidental to the operations of non-commercial organizations such as religious and charitable and political bodies which operate throughout the nation.

It is said that state and federal regulation may exist concurrently—that there may be state taxation and federal control of labor relations. That is not the question before the Court. The question here is whether, in view of the declared law that insurance is not commerce, there can be federal regulation of any part of insurance operations.

The question is also one of statutory construction: whether in view of the long established doctrine, Congress can be held to have included insurance companies within the purview of the National Labor Relations Act as being engaged in commerce within the definition contained in the Act.

There is the further question whether petitioner as a fraternal benefit society, declared by law to be a charitable and benevolent institution and released as such from the ordinary incidence of taxation upon corporations in the State of its creation, is engaged in commerce. It seeks no profit from the issuance of benefit certificates to its members, and can make none. Its purposes and aims are fraternal, cultural and patriotic, and these it follows. This is not the commerce that is referred to in the Constitution, nor is it the commerce that is defined by the Act in question.

It is respectfully submitted that the judgment and decree of enforcement of the Circuit Court of Appeals for the Seventh Circuit should be reversed, and the order of the National Labor Relations Board be set aside, and the amended complaint filed herein be dismissed.

Respectfully submitted,

CASIMIR E. MIDOWICZ,  
*Attorney for Petitioner,  
Polish National Alliance of  
the United States of North America.*

*Of Counsel:*

EWART HARRIS.

## INDEX TO AUTHORITIES CITED.

---

	PAGE
American Medical Assn. v. U. S., 317 U. S. 519.....	5, 6
Champion v. Ames, 188 U. S. 321.....	3
Hooper v. California (155 U. S. 648).....	4
International Text Book v. Pigg, 217 U. S. 91.....	3
Jordon v. Tashiro, 278 U. S. 123.....	5
Marcantonio (Congressman) 79 Cong. Rec. Part 9, p. 9698 .....	7
New York Life Ins. Co. v. Deer Lodge County, 231 U. S. 495.....	2, 3, 4
Paul v. Virginia (8 Wall. 168).....	2, 3, 4, 6
Report of T.N.E.C., p. 41, 77th Cong. 1st Sess. Doc. 35	6
Securities and Exchange Comm. v. Joiner Leasing Corp., No. 24, this term.....	4
Thames & Mersey v. U. S., 237 U. S. 19.....	3
Timberg in 50 Yale Law Journal, p. 995.....	5
Western Live Stock v. Bureau of Revenue, 303 U. S. 250.....	3

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, A. D. 1943

---

No. 228

---

POLISH NATIONAL ALLIANCE OF THE UNITED  
STATES OF NORTH AMERICA, A CORPORATION,  
*Petitioner,*  
*vs.*  
NATIONAL LABOR RELATIONS BOARD,  
*Respondent.*

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

---

**REPLY BRIEF OF PETITIONER.**

---

The question whether insurance is commerce or not is not now open to discussion as though it were a matter of first impression. The conditions under which *Paul v. Virginia* was decided, and the meaning of the word "commerce" in the late eighteenth century, and its meaning in modern dictionaries, have little relevance to the question before the Court.

Nor is the problem one of finding an analogy between an insurance policy crossing state lines through the means of interstate communication or transportation and the use of the same facilities by banks, press associations, sellers of lottery tickets, or, in the transportation of females for immoral purposes.

The question is one of construing the words "commerce" and "affecting commerce" in an Act,—the National Labor

**Relations Act**—which became law at a time when insurance had been declared not to be commerce for about seventy years before its enactment. The problem arises when it is sought to apply the provisions of this Act to a fraternal benefit society upon the theory that the society is in the insurance business, that insurance is commerce, and that therefore petitioner, the society in question, is engaged in commerce and its operations affect commerce.

The importance of *New York Life Insurance Co. v. Deer Lodge County*, 231 U. S. 495, lies in the fact that forty years or more after *Paul v. Virginia*, under conditions similar to the present, this Court reaffirmed the doctrine that insurance is not commerce. It is no answer to *Deer Lodge County*, to compare the conditions in 1868, or commerce in the late eighteenth century, with present day conditions and modern commerce, and ignore the fact that for seventy-five years insurance has been declared not to be commerce.

The contentions of the Government, and of the Board in this case were raised in *Deer Lodge County* and fairly met. The insurance company in that case proudly declared that it did business "in all the States of the United States and with persons residing in every country of the civilized world." The Court took particular notice of this contention and of the contention that is being urged today by the Government and the Board. "It was also urged," says the Court, "that modern life insurance had taken on essentially a national and international character, and that when *Paul v. Virginia* was decided, the business was to a great extent local; that is, conducted through the domestic stock companies. The great and commanding organizations of the present day had hardly begun the amazing development which has made them the greatest associations of administrative trusts in the business world."

There is no such change in the "climate of opinion" or in the relative position of insurance in the economic life of the United States as would warrant this Court in over-

ruling *New York Life Insurance Co. v. Deer Lodge County* and its long line of predecessors, with all the consequences such action will entail, in the absence of action by Congress directly challenging the doctrine that insurance is not commerce, and explicitly declaring that there shall be federal regulation of insurance by virtue of the power granted to Congress by the Commerce Clause.

Directly to the point is *Western Live Stock v. Bureau of Revenue*, 303 U. S. 250, wherein it is said, (citing *Paul v. Virginia*) "That the mere formation of a contract between persons in different States is not within the protection of the Commerce Clause, at least in the absence of Congressional action, unless the performance is within its protection, is a proposition no longer open to question." This case is not explained away by confining its doctrine to the mere issuance of an insurance policy and to no other transaction in connection therewith. It must be assumed that the contracts in question which were held, under the authority of *Paul v. Virginia* and its successors not to be commerce, were entered into for a monetary consideration, and that money was paid under them through the mails, and correspondence relating to them passed back and forth over state lines.

The Board contends that an insurance policy is itself an article of commerce as much as a lottery ticket or a correspondence course in learning. *Champion v. Ames*, 188 U. S. 321, and *International Text Book v. Pigg*, 217 U. S. 91, were both decided before *New York Life Ins. Co. v. Deer Lodge County*, and did not affect the decision of the Court in that case.

The effect of *Deer Lodge County* and its predecessors is said to be weakened by *Thames & Mersey v. U. S.*, 237 U. S. 19, but this language of the Court appears on page 25 of that case:

"Nor have we to do in the present case with the taxation of the insurance business as such, or with the



power of the State to fix the conditions upon which foreign corporations may transact business within its borders (citing *Paul v. Virginia*, *Hooper v. California*, *New York Life Ins. Co. v. Deer Lodge County* and others). Let it be assumed as this Court has said that the insurance business generally considered is not commerce; that the contract of insurance is a personal contract,—an indemnity against the happening of a contingent event. The question still remains whether policies of insurance against marine risks during the voyage to foreign ports are not so vitally connected with exporting that the tax on such policies is essentially a tax upon exportation itself. The answer must be found in the actual course of trade. Such taxation does not deal with preliminaries or with definite and separate subjects: the tax falls upon the exporting process."

The *Deer Lodge* case is also said to have been weakened by *Securities and Exchange Commission v. Joiner Leasing Corp.*, No. 24, this term. The Board say (Board Brief, pp. 35, 36):

"The sales, held by the Court to be in commerce, were in effect sales of real estate coupled with an economic inducement to share in the fruits of a speculative venture. Certainly a sale of a specific interest in real estate is 'personal' and as the Court observed in the *Deer Lodge* case: 'certainly nothing can be more immobile.' "

But this Court declared in the *Joiner* case:

"Defendants were not as a practical matter offering naked leasehold rights . . . Their proposition was to sell documents which offered purchaser a chance, without undue delay or additional cost, of sharing in discovery values which might follow a current exploration enterprise . . . An agreement to drill formed the con-

sideration upon which Anthony was able to collect leases on 4750 acres . . . undertaking to drill-enabled Jones to finance by selling acreage.

Acceptance of the offer made a contract on which payments were timed and contingent upon completion of the well and therefore a form of investment contract in which investor paid both for a lease and for a development project . . . The trading in these had all the evils inherent in security transactions which it was the aim of the Securities Act to end."

It was said by Sigmund Timberg in his article on page 995 of 50 Yale Law Journal, cited in a footnote to page 47 of the Board's brief:

"It must be conceded that, so far as the Courts have spoken, no type of insurance contract is a security for purposes of the State Blue Sky Laws, nor is it likely that any type of policy will be regarded as a security for purposes of the Securities Act of 1933. Insurance contracts do not come under the jurisdiction of State Security Commissions or of the S.E.C."

Timberg states further (p. 995, note) that the final House Report on S.E.C. legislation declared that insurance policies were not to be regarded as securities.

The Government and the Board seek an analogy between the present cases and the hospital cases of *Jorda v. Tashiro*, 278 U. S. 123, and *American Medical Assn. v. U. S.*, 317 U. S. 519. Such an analogy, if it exists, is not sufficient to overturn the declared doctrine that insurance is not commerce, which has stood unmodified for seventy-five years.

This Court in the *Tashiro* case, was careful to declare that it was giving a liberal interpretation to Treaty provisions, in accordance with established rules of construction.

The Court say:

"The terms 'commerce,' 'commercial' and 'trade' . . . may connote . . . other occupations and other recognized forms of business enterprise which does not necessarily involve trading in merchandise . . .

"The words 'commercial purposes' (in the Treaty) include the operation of a hospital as a business undertaking."

The question decided in *American Medical Association v. U. S.*, 317 U. S. 519, was not whether the activities of Group Health, a non-profit organization, were commerce, but whether Group Health was engaged in trade within the meaning of Section 3 of the Sherman Act.

Congress in the past seventy-five years has not challenged the doctrine of *Paul v. Virginia*. In this silence, and under the shadow of repeated decisions of this Court that insurance is not commerce, a universal and complex system of State regulation of insurance companies has come into being. This situation Congress has not seen fit to disturb.

In the report of the Temporary National Economic Committee, p. 41 (77th Congress, 1st Sess. Doc. 35) the Committee, although it had had presented to it the contention that the cases of *Paul v. Virginia* and its successors were "a most unfortunate and erroneous series of Court decisions," and although it found life insurance (legal reserve—not fraternal—Mono. #28, T.N.E.C., p. 1) to be one of the largest businesses in the United States, prefaced its recommendations with the words:

"Life insurance business is regulated by the States. Our studies have disclosed conditions which lead to the following recommendations which are respectfully made for the consideration of the several States in which these companies are domiciled."

The only places suggested in the Report for federal action had nothing to do with regulation of the lawful

business of insurance companies or of insurance itself, but looked toward the prevention of unlawful use of the mails, radio, etc., by unlicensed out-of-State companies; and the extension of the Bankruptcy Act to insurance company reorganizations and liquidations.

That the supporters of the National Labor Relations Act in its passage through Congress were content to accept this Court's definitions of Commerce as they then existed, is further shown by the statement of Congressman Marcantonio, (79 Cong. Rec., Part 3, page 9698): who having read Subsection 6 of Section 2:

"(6) The term 'commerce' means trade, traffic, or commerce or any transportation or communication relating thereto among the several states," etc., proceeded:

"I respectfully submit that this language does not in any manner conflict with the definition of 'interstate' as defined in the decision in the *Schechter* case. There is not a single word in this language which conflicts with the definition of 'interstate' as we find it in the Constitution or in any of the States."

The Congressman then read Sec. 7:

"The term 'affecting commerce' means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce," etc.,

and continued:

"If this particular definition is to be interpreted by a board to be created under this bill, so as to violate the interstate definition as handed down in the decision in the *Schechter* case, the Supreme Court will declare it unconstitutional . . . What we are trying to do here is to attempt to guarantee certain rights to labor in language which is constitutional, and if tomorrow the application of this statute in certain cases may be unconstitutional, at the same time we would preserve those rights in cases where the application of the statute would be deemed to be constitutional."

There is no discussion in the Board's brief of any of the cases cited by petitioner upon the proposition that a fraternal benefit society is not an insurance company. This phase of the case is passed off with the declaration that the fraternal activities of petitioner are mere adjuncts to its insurance business. The undisputed fact that petitioner is chartered as a non-profit corporation by the State of Illinois, and by the law of that State is declared to be a charitable and benevolent institution, and its funds are by law exempt from all taxation other than taxes on its real estate and office equipment, is dismissed with the statement that "the Illinois Law is immaterial" (Bd. bf. 74).

The charitable and benevolent nature of petitioner is not alone shown by its expenditures in charity and benevolence, substantial as these are, but this is the very nature given to it by the charter and the laws of Illinois, the State of its creation. It can make no profit from its transactions, and it must always preserve its representative form of government, and restrict its membership to selected persons of a particular national descent and their wives. Its members are bound by a ritual, and hold the common purpose announced in the preamble to the Constitution of the Polish National Alliance. It is not an insurance company and it is not engaged in commerce.

Respectfully submitted,

CASIMIR E. MIDOWICZ,

*Attorney for Petitioner, Polish  
National Alliance of the United  
States of North America.*

*Of Counsel,*

EWART HARRIS.





---

# BRIEF FOR THE RESPONDENT IN OPPOSITION



# INDEX

	Page
Opinions below .....	1
Jurisdiction .....	1
Questions presented .....	2
Statute involved .....	2
Statement .....	3
1. Nature of petitioner's operations .....	3
2. Unfair labor practices .....	7
Argument .....	12
1. Applicability of the Act to petitioner .....	13
2. Appropriateness of the unit .....	18
3. Unfair labor practices .....	22
Conclusion .....	22
Appendix .....	24

## AUTHORITIES CITED

<i>American Medical Association v. United States</i> , 317 U. S. 519	16, 18
<i>Associated Press v. National Labor Relations Board</i> , 301 U. S. 103	16, 17
<i>Champion v. Ames</i> , 188 U. S. 321	16
<i>Commissioner of Internal Revenue v. Illinois Life Insurance Co.</i> , 80 F. (2d) 280 (C. C. A. 7)	15
<i>Consolidated Edison Co. v. National Labor Relations Board</i> , 305 U. S. 197	15
<i>Electric Bond &amp; Share Co. v. Securities &amp; Exchange Commission</i> , 303 U. S. 419	16
<i>Hoopes on Canvass Co. v. Cullen</i> , 318 U. S. 313	17
<i>International Association of Machinists v. National Labor Relations Board</i> , 110 F. (2d) 29 (App. D. C.), aff'd, 311 U. S. 72	18
729	16
<i>International Text Book Co. v. Pigg</i> , 217 U. S. 91	16
<i>Martin-Rockwell Corp. v. National Labor Relations Board</i> , 118 F. (2d) 586 (C. C. A. 2)	20
<i>National Labor Relations Board v. Bank of America</i> , 130 F. (2d) 624 (C. C. A. 9), cert. denied, 318 U. S. 794	15
<i>National Labor Relations Board v. Christian Board of Publication</i> , 113 F. (2d) 678 (C. C. A. 8)	18
<i>National Labor Relations Board v. Delaware-New Jersey Ferry Co.</i> , 128 F. (2d) 130 (C. C. A. 3)	19

## II

	Page
<i>National Labor Relations Board v. Grower-Shipper Vegetable Ass'n</i> , 122 F. (2d) 368 (C. C. A. 9).....	18
<i>National Labor Relations Board v. Jones &amp; Laughlin Steel Corp.</i> , 301 U. S. 1.....	14
<i>North Whittier Heights Citrus Ass'n v. National Labor Relations Board</i> , 109 F. (2d) 76 (C. C. A. 9), cert. denied 310 U. S. 632, 311 U. S. 724.....	18
<i>Overstreet v. North Shore Corporation</i> , 318 U. S. 125.....	17
<i>Paul v. Virginia</i> , 75 U. S. 168.....	43, 15, 16, 17
<i>Penn Mutual Co. v. Lederer</i> , 252 U. S. 523.....	15
<i>Pittsburgh Plate Glase Co. v. National Labor Relations Board</i> , 313 U. S. 146.....	18
<i>Southern Steamship Corp. v. National Labor Relations Board</i> , 316 U. S. 31.....	19
<i>United States v. Ferger</i> , 250 U. S. 199.....	16
<i>United States v. Southeastern Underwriters</i> , decided August 5, 1943 (N. D. Ga.).....	13
<i>Wickard v. Filburn</i> , 317 U. S. 111.....	15
<b>Miscellaneous:</b>	
Third Annual Report of the National Labor Relations Board, p. 174.....	18
Fourth Annual Report of the National Labor Relations Board, p. 82.....	19
Fifth Annual Report of the National Labor Relations Board, pp. 63-64.....	19
Sixth Annual Report of the National Labor Relations Board, pp. 63, 70.....	19, 21
Seventh Annual Report of the National Labor Relations Board, p. 59.....	19
<b>Statutes:</b>	
National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, <i>et seq.</i> ).....	
Sec. 2.....	24
Sec. 7.....	24
Sec. 8.....	25
Sec. 9.....	25
Sec. 10.....	26

# **In the Supreme Court of the United States**

OCTOBER TERM, 1943

---

No. 226

**POLISH NATIONAL ALLIANCE OF THE UNITED STATES  
OF NORTH AMERICA, PETITIONER**

**v.**

**NATIONAL LABOR RELATIONS BOARD**

---

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH  
CIRCUIT**

---

**BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD  
IN OPPOSITION**

---

## **OPINIONS BELOW**

The opinion of the court below (R. 605-617) is not yet reported. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 539-575) are reported in 42 N. L. R. B. 1375.

## **JURISDICTION**

The decree of the court below was entered on June 22, 1943 (R. 621-624). The petition for a writ of certiorari was filed on August 4, 1943.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

#### QUESTIONS PRESENTED

1. Whether the unfair labor practices of an employer engaged in the life insurance business affect commerce within the meaning of the Act.

2. Whether the nonprofit character of a fraternal benefit association which engages in a nation-wide life insurance business exempts its unfair labor practices from the application of the Act.

3. Whether, in the circumstances of this case, the Board's determination of the unit appropriate for the purposes of collective bargaining constituted a proper exercise of the Board's discretion.

4. Whether there is substantial evidence to support the findings of the Board, which were sustained by the court below, that petitioner discriminated against 28 employees in violation of Section 8 (1) and (3) of the Act and that its unfair labor practices caused and prolonged a strike of its employees.

#### STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49



Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) are set forth in the Appendix, *infra*, pp. 24-26.

#### STATEMENT

After appropriate proceedings, the Board, on August 11, 1942, issued its findings of fact, conclusions of law, and order (R. 529-575). The facts as found by the Board and shown by the evidence may be summarized as follows:<sup>1</sup>

##### 1. NATURE OF PETITIONER'S OPERATIONS

The findings with respect to petitioner's operations are based on uncontradicted evidence. Petitioner, a fraternal benefit society composed of persons of Polish descent, is organized under the laws of the State of Illinois as a nonprofit corporation, with its main office in Chicago, Illinois (R. 541; 443). It is licensed to do business in 26 states, the District of Columbia, and the Province of Manitoba, Canada (R. 541; 385, 443). Petitioner's membership<sup>2</sup> is distributed among 1,817 membership lodges which are grouped into 190 councils, 160 of which are located outside the State of Illinois (R. 541; 15, 206, 384-385, 443).

<sup>1</sup> In the following statement the references preceding the semicolons are to Board findings and the succeeding references are to supporting evidence.

<sup>2</sup> Petitioner's members are insurance benefit certificate holders; in 1938 it abolished its "social membership," *i. e.*, its uninsured membership, and has since afforded only "beneficial membership," *i. e.*, certificate holding status (R. 9-10, 205, 328).

On December 31, 1941, petitioner had in force 272,897 insurance benefit certificates with a total face value of \$160,000,000, distributed among more than half of the states of the United States and Manitoba (R. 541; 444, 447). These insurance certificates provide for the payment of benefits in the case of death, disability and accident (R. 541; 443).<sup>3</sup>

Premiums collected in excess of benefits paid out are invested. On December 31, 1941, petitioner's portfolio of investments, totaling more than 30 million dollars, was composed of a variety of properties and securities: investments in railroads amounted to more than 1½ million dollars; bonds in public utilities and large-scale industries operating in all sections of the country amounted to about 3 million dollars; extensive real estate holdings in 5 states were valued at 11 million dollars; and securities of the United States, of state governments, and of various political sub-

---

<sup>3</sup> Petitioner sells every form of protection normally furnished by standard life insurance companies, including (1) ordinary life, (2) 20-year payment life, (3) 20-year endowment, (4) endowment at age of 65, and (5) combination term and paid up at age of 65 (R. 388). The provisions contained in petitioner's insurance contracts parallel those of the standard insurance policies (R. 394-402); its "ordinary life" policy, for example, provides for the payment of premiums, change of beneficiary, settlement options, automatic extended and paid-up insurance, premium and cash loans, and cash surrender values (R. 403). Premium rates are based on standard mortality tables (R. 388). Net earnings are distributed as dividends to certificate holders (R. 392-393).

divisions totaled more than 8 million dollars (R. 541-542; 384-385, 444). In 1941 its total income was \$5,717,344, of which \$3,723,364 was received from certificate holders and \$1,690,250 from investments (R. 542; 384). During the same period, benefits paid to certificate holders totaled \$1,845,126, and loans to certificate holders amounted to almost 1½ million dollars (R. 542; 384).

Petitioner's entire operations are directed by its officers and directors from its home office in Chicago, where all terms and conditions of the benefit certificates are determined, investments made, applications for certificates, claims, and loans received and acted upon, and all benefit certificates and checks issued and mailed (R. 542; 7-8, 11-12, 105-106, 204-205, 230-231, 237, 377-380, 444).

Petitioner, as an essential part of its operations, engages the services of the Retail Credit Co. of Atlanta, Georgia, to whom all applications for insurance certificates are mailed from Chicago and which company, in turn, investigates all applicants and mails credit reports from that company's branch offices throughout the country to petitioner's Chicago office (R. 543; 12-13). Substandard risks are reinsured through the Lincoln National Life Insurance Company of Fort Wayne, Indiana, thus necessitating the mailing of reinsurance documents to the Lincoln's offices at Fort Wayne (R. 543; 9, 10-11). At the time of the hearing,

more than \$250,000 of petitioner's risks were thus reinsured (R. 543; 11).

The administrative costs of handling these interstate transactions involve substantial sums of money. In 1941, \$169,000 was disbursed for commissions and fees of field agents, \$20,000 for payment of "managers" engaged in selling insurance certificates, over \$17,000 for field supervision and travel expenses of officials, \$13,000 for medical examinations, \$4,000 for credit investigations of applicants, and \$19,000 for postage, express, telegraph, and telephone service (R. 543; 13, 446, 448). In addition, petitioner disbursed over \$10,000 for advertising in newspapers, magazines, radio and other media, and \$1,340 for printing, all outside the State of Illinois (R. 543; 448). Further, petitioner achieves nation-wide publicity by publishing and selling an official almanac throughout the United States, and by distributing an official publication, the *Zgoda*, of which, during 1941, it mailed over 1,000,000 copies of the daily edition, and 5,000,000 copies of the Sunday edition to persons outside the State of Illinois (R. 543; 14, 446).<sup>4</sup>

Upon the basis of the above facts the Board found that petitioner's unfair labor practices were in commerce and affected commerce within the meaning of the Act (R. 544).

---

<sup>4</sup> The *Zgoda* is published by petitioner's wholly owned subsidiary, Alliance Printers and Publishers, Inc., an Illinois corporation (R. 543; 445).

## 2. UNFAIR LABOR PRACTICES

In March 1941 the Office Employees' Union, No. 20732, A. F. of L., hereinafter called the Union, began an organizational campaign among petitioner's office employees, and, by March 26, the Union included within its membership a majority of petitioner's employees in an appropriate unit (R. 548-549; 23-28, 91-92, 98-102, 119-123, 143, 154-157, 159-160, 275-277, 410-411).<sup>5</sup> Confronted with the successful unionization of its employees, petitioner's directors and executives set out to undermine the Union. Petitioner warned its employees that they were "foolish to get involved in [that] kind of a trouble, \* \* \* there [was] no place for a union in any organization like Polish National Alliance" (R. 551, 552, 554; 38, 39, 131, 171, 182-183); interrogated

<sup>5</sup> The Board found (R. 545-548) that all office employees of petitioner's Chicago office, excluding janitors, attorneys, elected officers, the chief clerk of the auditing department, the manager of the real estate department, the inspector of the rent collection department, rent collectors, the chief organizer of the organization department, the personal secretary to the president, the personal secretary to the general secretary, the confidential secretary to the censor (employed at Milwaukee, Wisconsin), the assistant secretary (administrative) to the general secretary, the assistant secretary (administrative) to the treasurer, and librarians, constitute a unit appropriate for collective bargaining purposes. Under the Argument (pp. 18-21, *infra*) we show that the Board's finding upon the unit question was not arbitrary, and that the court below properly sustained it.

them respecting their Union membership and activity (R. 551, 552; 75, 82, 108, 126, 130-131); offered wage increases to Andrzejewski, the Union Chairman, provided that he "dropped all union activities and induced the other employees to do likewise" (R. 551, 555; 36-37). Finally, on October 6, 1941, petitioner climaxed its antiunion campaign by discharging Anna Owsiak, an employee of outstanding ability and an open advocate of the Union (R. 556-558).

Prior to her joining the Union, Owsiak had frequently been complimented by petitioner's supervisory officials for the excellence of her work (R. 556; 133) and, on June 15, 1941, petitioner gave tangible evidence of its high regard for her by increasing her salary (R. 556; 133).<sup>6</sup> Her membership in the Union, which she joined on June 20, 1941 (R. 556; 120, 132), was known to petitioner. On August 25, 1941, when her supervisor inquired of her whether she had joined the Union, she candidly replied that she had (R. 557; 131-132). He then queried whether she thought it fair to her employer to join a union (R. 557; 132-133). Two weeks later Owsiak suffered an appendicitis attack and took a leave of absence (R. 557; 135, 139). On October 4, upon her return to petitioner's office, she was discharged, with the statement that

---

<sup>6</sup> There is also undisputed evidence that in July 1941, Owsiak was transferred to the real estate department because petitioner "needed someone who was efficient to help them catch up with the work" (R. 128, 134).



petitioner had determined to "let her go" because of a lack of work (R. 557; 66, 135-136). Petitioner, however, abandoned this ground for the dismissal when it talked to Union representatives later that day (R. 557-558; 136-137, 138, 266, 267). It then urged her absences and tardiness as the basis for her discharge (*ibid.*). The specious nature of the latter excuse,<sup>7</sup> which petitioner still advances for Owsiak's discharge (Pet. 45), lends weight to the Board's conclusion that the real reason for her discharge was her Union affiliation (R. 558). The Board found that Owsiak's membership in and support of the Union constituted the sole ground for her discharge (R. 558).

Despite petitioner's open antagonism, the Union, from March 26, 1941, to October 6, 1941, sought to bargain with petitioner, but to no avail (R. 549-550; 69, 200-201, 238, 426-427, 427-428). Petitioner, claiming that the Act did not apply to its activities, admittedly refused to bargain (R. 549-550; 309, 323, 427-428). On September 26, after the Union had announced its intention to strike, petitioner assured the Union that if the contemplated strike action were postponed until after the December 10 meeting of petitioner's Supervisory Council, employment relations would, in the meantime, be stabilized (R. 550; 63-64). Less

---

<sup>7</sup> Owsiak had never been criticized in this respect (R. 558; 138). As a matter of fact, all of her previous absences occurred before August 1941, most of them because of illness, and had been excused by petitioner (R. 558; 138-140).

than 2 weeks after this pronouncement, petitioner discriminatorily discharged Union member Anna Owsiak (see pp. 8-9, *supra*). The same afternoon the Union accused petitioner of violating the previously arranged truce by its discriminatory activities, thereby releasing the Union from its no-strike pledge (R. 559; 63, 65-66). Petitioner agreed to notify Owsiak before the Union meeting scheduled that night that she was to be reinstated the following morning (R. 558; 66-67, 136-137, 241). This was not done (R. 558, 559; 67, 137). The same night a Union meeting was held and the membership apprised of the state of negotiations; after a general discussion centering upon petitioner's refusal to bargain, and its continuing campaign of coercion and intimidation, the Union voted to strike (R. 559; 40, 67). The strike began the next day (*ibid.*). The Board found that petitioner, "as a result of these unlawful acts and [its] unwavering course of anti-union conduct" caused the foregoing strike (R. 563).

Petitioner sought to break the strike by various steps calculated to "impress upon the striking employees the futility of remaining members of the Union and to evade its duty to bargain collectively" (R. 563-564). Thus, it persisted in its refusal to bargain with the Union (R. 563-564; 67, 68), continued to make disparaging comments about the Union to Union members (R. 559, 561, 563, 564; 77-78, 173-174, 193), and, by several de-

vices, including the publication in its official organ of false and misleading statements concerning the causes and status of the strike, urged the strikers to return to their jobs (R. 560, 561-562; 41-42, 417-419, 420-422; 446).

On January 27, 1942, after the discontinuance of the strike, and again on February 9 and 11, all 26 of the remaining\* strikers unconditionally offered to return to work and applied for reinstatement (R. 565; 47-49, 423, 424-425). Petitioner admittedly ignored all of these communications (R. 565; 289) and, at the time of the hearing, none of the strikers had been reinstated (*ibid.*). The record plainly establishes that the work of the striking employees was being performed by employees transferred temporarily from other departments and by employees hired since the strike, both of which groups performed an unusual amount of overtime work (R. 565-566; 241-242, 263, 268, 289, 438, 439).

The Board concluded that, by these acts, petitioner had engaged in unfair labor practices within the meaning of Section 8 (1), (3), and (5).

---

\* One Ziolkowski, although going out on strike on October 7 with the others, attempted to return to work on October 10 (R. 564; 113-114). Petitioner demanded that "if [he was] to start working again [he would] have to fill out [an] application" as a new employee (R. 564; 115). Ziolkowski refused to accept this condition and was refused reinstatement (*ibid.*). The Board found that petitioner attached the unfavorable condition to its offer of reinstatement in order to punish Ziolkowski for having joined the Union and the strikers (R. 564-565).

of the Act (R. 556, 558, 563, 564, 565, 567), and ordered petitioner to cease and desist from these unfair labor practices; to bargain collectively with the Union; to reinstate Owsiak with back pay; to offer reinstatement to the 27 employees who went out on strike on October 7, 1941, including Ziolkowski, with back pay from January 27, 1942, the date of the discrimination against them; and to post appropriate notices (R. 572-574).

On August 21, 1942, the petitioner filed in the court below a petition to review the Board's order (R. 578-586). On June 5, 1943, the court handed down its decision and entered its decree enforcing the Board's order with minor modifications not here in issue (R. 605-624).

#### ARGUMENT

The only issue of general importance presented by the petition is the question whether the unfair labor practices of an employer engaged in the life insurance business affect commerce within the meaning of the Act. We believe that the decision below on this issue is clearly right, and in harmony with, rather than opposed to, the applicable decisions of this Court. Moreover, it presents no conflict with decisions of other circuit courts of appeals. We may point out, however, that a district court has recently held the business of fire insurance not to be within the scope of the Sherman Act, deeming itself bound by language in

opinions of this Court, which we regard as inapposite, that insurance is not commerce. *United States v. Southeastern Underwriters*, decided August 5, 1943 (N. D. Ga.), appeal to this Court allowed August 30, 1943. That case, of course, relates to business practices, not unfair labor practices, and in our judgment rests on a misapprehension of the decisions of this Court; its pendency would therefore not seem to call for further review of the case at bar.

#### 1. APPLICABILITY OF THE ACT TO PETITIONER

The present case does not require a test of the present vitality of the statements found in *Paul v. Virginia*, 75 U. S. 168, and other cases cited by petitioner (Pet. 32-38) to the effect that insurance is not commerce. As the court below held (R. 612), "even though petitioner's contention that it is not directly engaged in interstate commerce be tenable, it would still be faced with an insurmountable barrier. As already noted, the power of the Board is not limited to commerce but includes 'affecting commerce.'" The widespread effect upon interstate commerce which would ensue on a cessation or restriction of petitioner's operations is patent upon the record. The operations of verification, acknowledgment, recording, and depositing, prime requisites to the orderly functioning of petitioner's business, would be rendered impossible. The regular movement of funds into the nation's investment markets would be halted at its

source in Chicago and numerous enterprises deprived of capital, for want of essential administrative machinery. Similarly, the handling of new applications with the care required to secure and maintain the risk structure would, of necessity, be dispensed with. Collections of premiums in the field would inevitably suffer because of the disruption of the regular clerical and supervisory procedures in the central office. The placement of industrial and commercial investments would in consequence be adversely affected not only because of the interruption to the operations by which lending activities are carried out, but because of the shutting off of new funds. Normal handling, management, liquidation, and redistribution of old investments would likewise be disrupted.

There is nothing about insurance companies which renders their unfair labor practices less disruptive of commerce than those of other employers to which the Act has been held to apply. The test of jurisdiction laid down in *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, is satisfied in any case in which "stoppage of \* \* \* operations by industrial strife" would result in substantial interruption to or interference with the free flow of interstate commerce (301 U. S. at 41). Where such interruption would occur, the Court pointed out, unfair labor practices on the part of employers, shown by long experience to be "prolific causes of strife,"



have a "close and intimate relation" to interstate commerce and are subject to federal regulation under this Act (301 U. S. at 42, 43).

Petitioner's activities affect commerce no less than the operations of a bank; unfair labor practices in that field have been held to be covered by the Act, and this Court has declined to review the holding. *National Labor Relations Board v. Bank of America*, 130 F. (2d) 624, 626 (C. C. A. 9), cert. denied, 318 U. S. 791. Compare also *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197; *Wickard v. Filburn*, 317 U. S. 111.

Even if the coverage of the Act depended on a showing that petitioner is engaged in interstate commerce, such a showing is amply made in the present case, and the result is not inconsistent with what was actually decided in *Paul v. Virginia* and derivative precedents. Petitioner's business, the interstate sale of a variety of certificates of insurance, to a nation-wide segment of the population, constitutes a continuous course of dealing involving the interstate exchange of a commodity, although intangible, for money. The certificates of insurance entitle the holder to participation in the profits of the enterprise and various loan privileges,<sup>9</sup> thus constituting a special type of security, transactions in which are not beyond the reach of

<sup>9</sup> *Penn Mutual Co. v. Lederer*, 252 U. S. 523, 531-532; *Commissioner of Internal Revenue v. Illinois Life Insurance Co.*, 80 F. (2d) 280, 282 (C. C. A. 7).

the commerce power.<sup>10</sup> The certificates also provide for money payment upon death or the expiration of a fixed term; regulation of the seller of such a thing of value is clearly within the scope of the commerce clause.<sup>11</sup>

Moreover, as a regular feature of its business petitioner constantly and extensively uses the mails, telephones, and like instrumentalities of interstate commerce, and receives remittances, premiums, applications, correspondence, and documents through these media. The normal everyday dealings between petitioner and its widely scattered group of certificate holders thus consists of a two-way movement of communications, documents, and money, both necessarily employing the channels of interstate commerce. *Associated Press v. National Labor Relations Board*, 301 U. S. 103, 128; cf. *International Text Book Co. v. Pigg*, 217 U. S. 91, 106-107.

With respect to *Paul v. Virginia*, and similar cases, the court below properly observed (R. 611) that "in each of [these cases] the court was considering the power of the state to tax or regulate, and not the power of Congress under the Commerce Clause. \* \* \* The state's power to tax

<sup>10</sup> *Electric Bond & Share Co. v. Securities and Exchange Commission*, 303 U. S. 419, 433; *Champion v. Ames*, 188 U. S. 321, 352; *United States v. Fergar*, 250 U. S. 199, 204-205.

<sup>11</sup> *Associated Press v. National Labor Relations Board*, 301 U. S. 103, 128-129; *American Medical Association v. United States*, 317 U. S. 519.

or regulate is not the terminal boundary of federal power. 'It does not follow that because a thing is subject to state taxation it is also immune from federal regulation under the Commerce Clause' *Binderup v. Pathe Exchange*, 263 U. S. 291, 311." See *Overstreet v. North Shore Corporation*, 318 U. S. 125. Moreover, *Paul v. Virginia* and the cases cited by petitioner have no application beyond the execution of the insurance policy, which in itself merely evidences an insurance transaction.<sup>12</sup>

It is of no consequence, finally, that petitioner is organized under the Illinois law relating to non-profit organizations and operates for the sole benefit of its members. Petitioner does not undertake to differentiate its actual insurance operations from those of its nonfraternal competitors (Pet. 26-31; R. 544; 386-387). It is well settled that the mutual or nonprofit character of an enterprise does not remove otherwise commercial activities from the field of commerce. *Associated Press v. National Labor Relations Board*, 301

<sup>12</sup> As pointed out by this Court in its discussion of the conduct of the business of insurance in *Hoopeson Canning Co. v. Cullen*, 318 U. S. 313, at 317:

"The actual physical signing of contracts may be only one element in a broad range of business activities. Business may be done in a state although those doing the business are scrupulously careful to see that not a single contract is ever signed within the state's boundaries. Important as the execution of written contracts may be, it is ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction."

U. S. 103, 128-129; cf. *American Medical Association v. United States*, 317 U. S. 519.<sup>13</sup>

## 2. APPROPRIATENESS OF THE UNIT

Petitioner's contention (Pet. 42-45) that the Board wrongfully included within the unit five "chief clerks" is without merit.

It is established that the Board's determination of the bargaining unit, "peculiarly a matter of administrative discretion" (*International Association of Machinists v. National Labor Relations Board*, 110 F. (2d) 29, 46 (App. D. C.), aff'd 311 U. S. 72, 729) and requiring application of specialized experience and expert knowledge concerning the process of collective bargaining, is conclusive unless arbitrary. *Pittsburgh Plate Glass Co. v. National Labor Relations Board*, 313 U. S. 146, 152-154.

The Board's decision in this case fully accords with its general policy of including in the unit those employees who "have a mutual interest in the objects of collective bargaining" (*Third An-*

<sup>13</sup> The only other circuit courts of appeals which have considered orders of the Board issued against employers who operated under a nonprofit form of organization have enforced them without question. *National Labor Relations Board v. Christian Board of Publication*, 113 F. (2d) 678 (C. C. A. 8); *North Whittier Heights Citrus Ass'n v. National Labor Relations Board*, 109 F. (2d) 76 (C. C. A. 9), cert. denied, 310 U. S. 632, 311 U. S. 724; *National Labor Relations Board v. Grower-Shipper Vegetable Ass'n*, 122 F. (2d) 368 (C. C. A. 9).

*nual Report*, p. 174).<sup>14</sup> While the chief clerks, whose exclusion petitioner urges, are paid at a higher rate than other of the office employees, and exercise limited authority, allocating work to employees ranging in number from one to five in their respective departments, they do not have the power to hire and fire, or recommend hiring and firing, and a substantial portion of their duties is clerical (R. 545; 18, 220-221, 411-416). That the "chief clerks" stand on the same level as the other office employees is indicated by the fact that they, like the other office employees, take orders, request leave, and receive their pay from the same supervisory employee (R. 16, 18, 106, 113, 129, 163).

Petitioner's reliance (Pet. 43-44) upon the decision of the Third Circuit Court of Appeals in *National Labor Relations Board v. Delaware-New Jersey Ferry Co.*, 128 F. (2d) 130, as support for its contention, is misplaced. In the *Delaware-New Jersey* case, as the court stressed in its decision (pp. 136-137), licensed officers were excluded from a unit of ship personnel because of the sharp cleavage between licensed officers and the employees who must obey their orders or be found guilty of mutiny under maritime law. Cf. *Southern Steamship Corp. v. National Labor Relations*

<sup>14</sup> See also *Fourth Annual Report*, p. 82; *Fifth Annual Report*, pp. 63-64; *Sixth Annual Report*, p. 63; *Seventh Annual Report*, p. 59.

*Board*, 316 U. S. 31. Certainly it cannot be said that the Board's action (R. 545), upheld by the court below (R. 614), "was so unreasonable or capricious as to pass the bounds of permissible discretion," *Marlin-Rockwell Corp. v. National Labor Relations Board*, 116 F. (2d) 586, 587 (C. C. A. 2), and it does not present a question of importance calling for review by this Court.

Petitioner's further contention (Pet. 43) that the Board drew an arbitrary distinction between the chief clerks included within the unit and "four similar supervisory employees" excluded from the unit, is without foundation in the record. Kostecki, assistant general secretary, and Foszez, head of the auditing department, two of the so-called "similar supervisory employees" are,<sup>15</sup> as contrasted with the "chief clerks," top ranking supervisors. Kostecki performs general supervisory functions with respect to all the employees in the office of the general secretary (R. 16, 18, 19, 215, 254, 255). Both petitioner and the employees regard him as a "boss" (R. 16, 19, 61, 359). Indeed, upon Kostecki's appointment as assistant general secretary, the general secretary

---

<sup>15</sup> While petitioner refers to "four similar supervisory employees" in its petition (Pet. 43), since petitioner in its brief before the court below limited its attack upon the Board's inclusion of the chief clerks to a comparison between the chief clerks and Kostecki and Foszez, it is likewise limited in its attack upon the opinion of the court below to these two and improperly raises any other employee's status.



assembled all of the employees in his office, including the chief clerks to whose inclusion within the unit petitioner now objects, and announced that they would thereafter "take orders" from Kostecki (R. 16). Likewise, Foszcz, as head of the auditing department, passes upon leaves, absences, and tardiness of the 14 employees under his general supervision (R. 547; 20, 89, 106, 129, 191). Finally, that both Foszcz and Kostecki are allied with management and therefore stand on a different plane than do the chief clerks, is clear from their active direction of petitioner's drive among the employees to collect funds with which to perpetuate in office the then current officer holders (R. 20-21, 50, 107, 164, 169). The line drawn is in consonance with the Board's policy of including within the unit employees who, though possessing limited indicia of supervisory authority, are nevertheless allied in interest and in the character of the work performed with their fellow employees rather than with management (*Sixth Annual Report*, p. 70).<sup>16</sup>

---

<sup>16</sup> Petitioner's bare assertion (Pet. 43), unsupported by record references, that the Board arbitrarily drew a line between the secretary to the medical director, whom the Board included within the unit, and the secretary to the general secretary, whom the Board excluded from the unit, is without merit. This contention ignores the fundamental basis for the Board's exclusion of certain types of confidential employees. The Board excludes as confidential employees those employees who have access to confidential information dealing with labor relations (*Sixth Annual Re-*

### 3. UNFAIR LABOR PRACTICES

Petitioner's contention (Pet. 45-47) that the Board's findings that petitioner violated Section 8 (1) and (3) of the Act are not supported by substantial evidence presents no question of general importance. Further, the evidence summarized in the Statement (*supra*, pp. 7-11) affords full support for the challenged findings, as the court below held (R. 614).

### CONCLUSION

The decision below, sustaining the Board's findings and order, is correct, and there is no conflict of decisions. Accordingly, no further review

port, p. 70). The duties of a secretary to a medical director checking applications for insurance does not fall within this category (R. 545-546; 221, 223). On the other hand, Kiloren, the secretary to the general secretary, has access to confidential information pertaining to labor relations and, in addition, is a ranking supervisory employee having charge of all the girls in the general secretary's office, numbering between 37 and 40 (R. 553; 19, 28, 29, 124-125, 163-164). Equally untenable is petitioner's assertion (Pet. 43) that the Board arbitrarily drew a distinction between two librarians and two so-called "editors." The librarians work in the basement entirely apart from the other employees in the unit found to be appropriate, performing functions peculiar to their calling (R. 546; 31, 59-60, 216-217, 255-256, 411-412) whereas the so-called "editors," classified respectively "clerk and editor" and "correspondent," are employed in the general secretary's office in the publication of the weekly *Zgoda* and a monthly youth publication (R. 546; 222-223, 416). From the standpoint of petitioner's administrative organization, the nature of the work performed, and the place of performance, they are clearly a part of the unit.

would seem to be required. If, however, the Court should regard the question of commerce as warranting the granting of the petition, the writ should be limited to that issue.

Respectfully submitted.

✓ CHARLES FAHY,  
*Solicitor General.*

✓ ROBERT B. WATTS,  
*General Counsel,*

✓ RUTH WEYAND,  
WILLIAM J. ISAACSON,  
*Attorneys,*  
*National Labor Relations Board.*

SEPTEMBER 1943.

## APPENDIX

---

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1937, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*), are as follows:

### SEC. 2. When used in this Act—

\* \* \* \* \*

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce; or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

\* \* \* \* \*

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities.

for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

\* \* \* \*

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: \* \* \*

\* \* \* \*

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9 \* \* \*

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise, to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of

employees, or utilize any other suitable method to ascertain such representatives.

\* \* \* \* \*

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.







# INDEX

---

	Page
Opinions below.....	1
Jurisdiction.....	1
Question presented.....	2
Statute involved.....	2
Statement.....	2
Summary of argument.....	12
Argument:	
The scope of this brief, in relation to that filed in No. 354.....	16
I. The life insurance business is subject to the federal commerce power.....	19
A. The life insurance business is organized and functions through the use of interstate channels.....	19
B. The life insurance business is commercial in character.....	23
1. In general.....	23
2. A life insurance policy is an article of commerce.....	27
C. The purchase of the service of insurance protection is in commerce.....	36
D. The life insurance business substantially affects interstate commerce because of its importance as a credit institution.....	45
II. Congress did not intend to exempt employers engaged in the insurance business from the National Labor Relations Act.....	51
III. Petitioner's status as a fraternal benefit society does not exempt it from the Act.....	62
A. Petitioner is in the insurance business.....	62
B. Petitioner is not a charitable and nonprofit organization.....	70
C. Even if petitioner were a nonprofit organization, it would be subject to the commerce power.....	72
D. The Illinois law is immaterial.....	74
Conclusion.....	76
Appendix.....	77



# INDEX

	Page
Opinions below .....	1
Jurisdiction .....	1
Question presented .....	2
Statute involved .....	2
Statement .....	2
Summary of argument .....	12
Argument:	
The scope of this brief, in relation to that filed in No. 354.	16
I. The life insurance business is subject to the federal commerce power .....	19
A. The life insurance business is organized and functions through the use of interstate channels .....	19
B. The life insurance business is commercial in character .....	23
1. In general .....	23
2. A life insurance policy is an article of commerce .....	27
C. The purchase of the service of insurance protection is in commerce .....	36
D. The life insurance business substantially affects interstate commerce because of its importance as a credit institution .....	45
II. Congress did not intend to exempt employers engaged in the insurance business from the National Labor Relations Act .....	51
III. Petitioner's status as a fraternal benefit society does not exempt it from the Act .....	62
A. Petitioner is in the insurance business .....	62
B. Petitioner is not a charitable and nonprofit organization .....	70
C. Even if petitioner were a nonprofit organization, it would be subject to the commerce power .....	72
D. The Illinois law is immaterial .....	74
Conclusion .....	76
Appendix .....	77

## CITATIONS

Cases:	Page
<i>Addyston Pipe &amp; Steel Co. v. United States</i> , 175 U. S. 211.....	34
<i>Aetna Life Insurance Co. v. Phillips</i> , 69 F. (2d) 901.....	28
<i>American Medical Ass'n. v. United States</i> , 317 U. S. 519.....	14, 43, 72
<i>Associated Press v. National Labor Relations Board</i> , 301 U. S. 103.....	45, 52, 73
<i>Atlantic Cleaners and Dyers v. United States</i> , 286 U. S. 427.....	44
<i>Beechley v. Mulville</i> , 102 Iowa 602, 70 N. W. 107.....	24, 39
<i>Bowers v. Lawyers Mortgage Co.</i> , 285 U. S. 182.....	75
<i>Burlingham v. Crouse</i> , 228 U. S. 459.....	28
<i>Burnet v. Wells</i> , 289 U. S. 670.....	31
<i>Caminetti v. United States</i> , 242 U. S. 470.....	72
<i>Carnes v. Franklin Life Insurance Co.</i> , 81 F. (2d) 800.....	28
<i>Century Wood Preserving Co. v. Commissioner of Internal Revenue</i> , 69 F. (2d) 967.....	41
<i>Champion v. Ames</i> , 188 U. S. 321.....	13, 32, 34
<i>Chase National Bank v. United States</i> , 278 U. S. 327.....	26, 31
<i>Cohen v. Samuels</i> , 245 U. S. 50.....	28
<i>Colonial Life Insurance Co. of America, Matter of</i> , 42 N. L. R. B. 1177.....	55
<i>Commissioner of Internal Revenue v. Illinois Life Insurance Co.</i> , 80 F. (2d) 280.....	30
<i>Consolidated Edison Co. v. National Labor Relations Board</i> , 305 U. S. 197.....	14, 46, 49, 52, 56
<i>Covington Bridge Co. v. Kentucky</i> , 154 U. S. 204.....	72
<i>Duffy v. Mutual Benefit Life Insurance Co.</i> , 272 U. S. 613.....	30
<i>Electric Bond and Share Co. v. Securities and Exchange Commission</i> , 303 U. S. 419.....	44, 45
<i>Equitable Life Insurance Co., Matter of</i> , 21 N. L. R. B. 37.....	55
<i>Eureka Maryland Assurance Corp., Matter of</i> , 17 N. L. R. B. 381.....	55
<i>Gibbons v. Ogden</i> , 9 Wheat. 1.....	43
<i>Gooch v. United States</i> , 297 U. S. 124.....	72
<i>Grigsby v. Russell</i> , 222 U. S. 149.....	26, 29
<i>Guggenheim v. Rasquin</i> , 312 U. S. 254.....	32
<i>Hassett v. Associated Hospital Service Corp.</i> , 125 F. (2d) 611, certiorari denied, 316 U. S. 672.....	70, 72, 75
<i>Home Beneficial Association of Richmond, Va., Matter of</i> , 17 N. L. R. B. 1027.....	55
<i>Hoopeston Canning Co. v. Cullen</i> , 318 U. S. 313.....	23
<i>International Textbook Co. v. Pigg</i> , 217 U. S. 91.....	13, 32, 34
<i>John Hancock Mutual Life Ins. Co. Matter of</i> , 26 N. L. R. B. 1024.....	55
<i>Jordan v. Tashiro</i> , 278 U. S. 123.....	43
<i>Knights of Pythias v. Kalinski</i> , 163 U. S. 289.....	67
<i>Life and Casualty Insurance Co. of Tennessee, Matter of</i> , 53 N. L. R. B. No. 216.....	55
<i>Life Insurance Co. of Virginia, Matter of</i> , 38 N. L. R. B. 20.....	55
<i>Life Insurance Co. of Virginia, Matter of</i> , 29 N. L. R. B. 246.....	55



# III

	Page
<i>Life Insurance Co. of Virginia, Matter of</i> , 31 N. L. R. B. 674.....	55
<i>Life Insurance Co. of Virginia, Matter of</i> , 24 N. L. R. B. 411...	55
<i>London Shoe Co. v. Commissioner of Internal Revenue</i> , 80 F. (2d) 230.....	41
<i>Lovell v. St. Louis Mutual Life Insurance Co.</i> , 111 U. S. 264.....	41
<i>Lucas v. Alexander</i> , 279 U. S. 573.....	30
<i>Martin v. N. Y. Life Insurance Co.</i> , 104 F. (2d) 573.....	31
<i>Metropolitan Life Insurance Co., Matter of</i> , 43 N. L. R. B. 962...	55
<i>Midland Bank v. Dakota Life Insurance Co.</i> , 277 U. S. 346.....	29
<i>Morgan v. Commissioner</i> , 309 U. S. 78.....	75
<i>National Commercial Title Co. v. Duffy</i> , 132 F. (2d) 86.....	75
<i>National Labor Relations Board v. Bank of America</i> , 130 F. (2d) 624, certiorari denied, 318 U. S. 791.....	48, 49
<i>National Labor Relations Board v. Bradford Dyeing Ass'n</i> , 310 U. S. 318.....	50
<i>National Labor Relations Board v. Christian Board of Publication</i> , 113 F. (2d) 678.....	72
<i>National Labor Relations Board v. Fainblatt</i> , 306 U. S. 601.....	50, 52, 56
<i>National Labor Relations Board v. Friedman-Harry Marks Clothing Co.</i> , 301 U. S. 58.....	50
<i>National Labor Relations Board v. Grower-Shipper Vegetable Ass'n</i> , 122 F. (2d) 368.....	73
<i>National Labor Relations Board v. Jones &amp; Laughlin Steel Corp.</i> , 301 U. S. 1.....	48, 52, 56
<i>National Thrift Corporation v. Welch</i> , 56 F. (2d) 1077, appeal dismissed by stipulation, 66 F. (2d) 1009.....	31
<i>New York Life Insurance Co. v. Cravens</i> , 178 U. S. 389.....	33
<i>New York Life Insurance Co. v. Deer Lodge County</i> , 231 U. S. 495.....	13, 21, 33, 35, 36
<i>New York Life Insurance Co. v. Statham</i> , 93 U. S. 24.....	20, 22, 66
<i>North American Union v. Hart</i> , 250 Fed 390.....	26
<i>Northwestern Mutual Fire Association, etc., Matter of</i> , 46 N. L. R. B. 825.....	55
<i>North Whittier Heights Citrus Ass'n v. National Labor Relations Board</i> , 109 F. (2d) 76, certiorari denied, 310 U. S. 632.....	73
<i>Osborn v. Ozlin</i> , 310 U. S. 53.....	25
<i>Paul v. Virginia</i> 8 Wall. 168.....	13, 24, 27, 33, 45
<i>Peoples Life Insurance Co. of Washington, D. C., Matter of</i> , 46 N. L. R. B. 1115.....	55
<i>Penn Mutual Life Insurance Co. v. Lederer</i> , 252 U. S. 523.....	30, 71
<i>Prudential Insurance Co. of America, Matter of</i> , 46 N. L. R. B. 430.....	55
<i>Prudential Insurance Co. of America, Matter of</i> , 47 N. R. L. B. 1103.....	55
<i>Prudential Insurance Co. of America, Matter of</i> , 49 N. L. R. B. 450.....	55
<i>Rearick v. Pennsylvania</i> , 203 U. S. 507.....	36

	Page
<i>Santa Cruz Fruit Packing Co. v. National Labor Relations Board</i> , 303 U. S. 453.....	52, 56
<i>Securities and Exchange Commission v. Joiner Leasing Corp.</i> , No. 24, this Term, decided Nov. 22, 1943.....	13, 25, 35
<i>Schechter Corp. v. United States</i> , 295 U. S. 495.....	58
<i>Supreme Liberty Life Ins. Co., Matter of</i> , 32 N. L. R. B. 94.....	55
<i>Swift &amp; Co. v. United States</i> , 196 U. S. 375.....	36
<i>Thames &amp; Mersey Ins. Co. v. United States</i> , 237 U. S. 19.....	53
<i>United States v. Darby</i> , 312 U. S. 100.....	50
<i>United States v. Hill</i> , 248 U. S. 420.....	72
<i>United States v. Metropolitan Life Ins. Co.</i> , 41 F. Supp. 91.....	31
<i>United States v. Simpson</i> , 252 U. S. 465.....	72
<i>United States v. Supplee Biddle Hardware Co.</i> , 265 U. S. 189.....	26
<i>United States v. Union Pacific R. R. Co.</i> , 226 U. S. 61.....	44
<i>United States v. Wrightwood Dairy Co.</i> , 315 U. S. 110.....	46
<i>Washington Branch of the Sun Life Insurance Company, Matter of</i> , 15 N. L. R. B. 817.....	55
<i>Washington, Virginia &amp; Maryland Coach Co. v. National Labor Relations Board</i> , 301 U. S. 142.....	52
<i>Western Live Stock v. Bureau of Revenue</i> , 303 U. S. 250.....	23
<i>Wickard v. Filburn</i> , 317 U. S. 111.....	50
<i>Wilcutts v. Investor's Syndicate</i> , 57 F. (2d) 811.....	31
Statutes:	
Bankruptcy Act (11 U. S. C. Sec. 110 (a) Ch. 5), Sec. 70 (a).....	28
Illinois Insurance Code (Ill. Rev. Stat., 1941, c. 73, Art. XVII):	
Section 286.....	67
Section 308.....	65
Section 314.....	74
Section 315.....	69
Internal Revenue Code, Sec. 201.....	24
Internal Revenue Code, as amended:	
Section 1426 (b) 8.....	74
Section 1426 (b) 10 (A) (ii).....	74
Section 1607 (c) (8).....	74
National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, et seq.):	
Section 2:	
(2).....	73, 78
(6).....	51, 61, 77
(7).....	51, 77
Section 10 (a).....	51, 77
Social Security Act as amended (49 Stat. 625, 53 Stat. 1373; 42 U. S. C., Sec. 409):	
Section 209:	
(b) (8).....	74
(b) (10).....	74

## Miscellaneous:

	Page
Baker, <i>Assignments of Life Insurance Policies</i> , 27. <i>Marquette Law Rev.</i> 171 (1943).....	28
Basye, Walter, <i>History and Operation of Fraternal Insurance</i> , Rochester (1919), p. 108.....	66
<i>Beneficial Association</i> , 10 C. J. S. Sec. 1.....	65
Best's <i>Illustrations</i> (1943).....	63
<i>Budget Standards for Family Agencies in New York City</i> , New York (1938), p. 40.....	38
<i>Cash Benefits Under Voluntary Disability Insurance in the United States</i> , Bureau of Research and Statistics, Social Security Board, Report No. 6, pp. 72-73.....	68
<i>Chicago Standard Budget for Dependent Families</i> , Chicago (1937), pp. 30, 40.....	38
79 Cong. Rec. 7572-7573; 8540; 8815-8816; 9709-9710.....	57, 58, 59, 60
<i>Cost of Living for Aged Persons</i> , Bureau of Research and Statistics Memorandum No. 53 (1943), p. 30.....	39
<i>Cost of Living For Women Workers</i> , N. Y. State Dept. of Labor, Division of Women in Industry (1942), p. 35.....	38
<i>Cost of Living For Women Workers and Minors Who Come Under the Provisions of the Minimum Wage Law of the State of New Jersey</i> , N. J. Dept. of Labor, Minimum Wage Bureau (1938), p. 29.....	38
<i>The Fraternal Compend Digest</i> , 1941, p. 55.....	74
<i>Fraternal Orders</i> , 6 <i>Encyc. Soc. Sciences</i> (1931), 423.....	65
<i>Fraternal Life Insurance</i> , Indianapolis (1942), p. 113.....	68
Gesell, G. A., and Howe, E. J., <i>Study of Legal Reserve Life Insurance Companies</i> , Monograph No. 28, Temporary National Economic Committee, Washington (1941), pp. 5, 342, 365.....	19, 47
Gist, N. P. <i>Secret Societies: A Cultural Study of Fraternalism in the United States</i> , University of Missouri Studies, Vol. XV, No. 4, p. 156.....	68
Hinton, Jessie, <i>Budget Guides for Families Receiving Public Assistance</i> , Md. Board of State Aid and Charities, Baltimore (1937), p. 51.....	39
Howe, Ernest, <i>Hearings before the Temporary National Economic Committee</i> , 76th Cong., 3rd Sess., (1940) pp. 14700-14726.....	48
Huebner, S. S., <i>Federal Supervision and Regulation of Insurance</i> , <i>Annals of the American Academy of Political Science</i> , Vol. XXVI, No. 3, Nov. 1905, p. 703.....	41
Huebner, S. S., <i>Life Insurance</i> , New York (1935), p. 65.....	26
Huebner, S. S., <i>The Economics of Life Insurance</i> , New York and London (1927).....	41
Maclean, J. B., <i>Life Insurance</i> , New York and London (1939), pp. 3-4, 448, 455.....	20, 21, 40

# VI

## Miscellaneous—Continued.

	Page
Monograph No. 2, <i>Families and their Life Insurance—A Study of 2132 Massachusetts Families and their Life Insurance Policies</i> , Washington (1940), Temporary National Economics Committee.....	37
Monthly Minimum Standard Budget, City of Cincinnati, Department of Public Relief (1940), p. 6.....	39
Moulton, H. G., <i>The Financial Organization of Society</i> , Chicago (1931), p. 316.....	47
Mowbray, <i>Insurance—Its Theory and Practice in the United States</i> (1937) .....	23
New Jersey Department of Labor, 39th Annual Report of the New Jersey Bureau of Industrial Statistics for the Year ending Oct. 31, 1916, p. 262.....	51
New York Times: July 26, 1916; July 28, 1916; July 29, 1916, August 4, 1916; August 12, 1916.....	51
Nichols, <i>Fraternal Insurance in the United States: Its Origin, Development, Character, and Existing Status</i> , 70 Annals of the American Academy 109 (1921).....	65
Pacific Underwriter, <i>The Insurance Strike</i> , July 25, 1916..	51
15 Proceedings, National Fraternal Congress of America, 251 (1928) .....	67
16 Proceedings, National Fraternal Congress of America, 157 (1929) .....	66
16 Proceedings, National Fraternal Congress of America, 107 (1929) .....	67
Quantity and Cost Budgets For Three Income Levels, Heller Committee for Research in Social Economics, Berkeley, Cal. (1942), p. 16.....	38
Report of the Budget Council of Boston (N. D.) p. 58....	39
Report of the Committee on Statutory Legislation, 16 Proceedings, National Fraternal Congress of America, 155 (1929) .....	69
Report by Securities and Exchange Commission on Investment Trusts and Investment Companies, 75th Cong., 1st Sess., (1939), p. 1.....	31
Rydgren, A. A., <i>The Significance of Reduced Interest Earnings</i> , in Life Insurance, Trends and Problems, Philadelphia (1943).....	40
Seligman, <i>Principles of Economics</i> , (12th ed. 1929), p. 607..	42
Senate Report No. 573, 74th Cong., 1st Sess., p. 18.....	56
Spectator Insurance Yearbook, <i>Life Insurance</i> , 1943.....	19, 47
The Spectator, <i>The Insurance Strike</i> , August 3, 1916.....	51
Stalson, J. O., <i>Marketing Life Insurance</i> , Cambridge (1942), p. 31.....	25
42 Statistics Fraternal Societies (1936) 24.....	66

# VII

## Miscellaneous—Continued.

	Page
49 Statistics Fraternal Societies (1943), p. 26.....	62
Stecker, M. L., <i>Intercity Difference in Costs of Living in March 1935, 59 Cities</i> , WPA Research Monograph XII, Washington (1937), p. 86.....	37
Stecker, M. L., <i>Quantity Budget For Basic Maintenance and Emergency Standards of Living</i> , WPA Research Bulletin, Washington (1936), p. 54.....	37
<i>Suggested Family Budget at Minimum Cost</i> , Bureau of Aid to Dependent Children, Division of Public Assistance, Columbus, Ohio (1937), p. 38.....	38
<i>Taxable Status of Fraternal Insurance</i> , 47 Yale L. J. 965 -	65
Timberg, <i>Insurance and Interstate Commerce</i> , 50 Yale Law Journal 959.....	25, 47
U. S. Department of Labor, <i>Annual Report</i> , 1917, pp. 41, 52, 58.....	51
Weekly Underwriter, <i>The Prudential Strike</i> , July 29, 1916..	51
Weiss, G. S., Waite, W. and Stitt, L., <i>Factors to be Considered in Preparing Minimum-Wage Budgets for Women</i> , U. S. Dept. of Agriculture, Pub. No. 324, p. 34.....	38
Temporary National Economic Committee, Hearings (1940).....	19, 20, 25
Vance on Insurance (2d ed. 1930), p. 80.....	39





# **In the Supreme Court of the United States**

**OCTOBER TERM, 1943**

---

**No. 226**

**POLISH NATIONAL ALLIANCE OF THE UNITED STATES  
OF NORTH AMERICA, PETITIONER**

**v.**

**NATIONAL LABOR RELATIONS BOARD**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

---

**BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD**

---

## **OPINIONS BELOW**

The opinion of the court below (R. 227-240) is reported in 136 F. (2d) 175. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 185-220) are reported in 42 N. L. R. B. 1375.

## **JURISDICTION**

The decree of the circuit court of appeals was entered on June 5, 1943 (R. 240-241).

The petition for a writ of certiorari was filed on August 4, 1943, and was granted on October 11,

1943, limited to the first five questions presented in the petition, which relate to the Act's applicability to petitioner. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

#### QUESTION PRESENTED

Whether the insurance activities of a fraternal benefit society are subject to the commerce power and the exercise thereof in the National Labor Relations Act.

#### STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) are set forth in the Appendix, *infra*, pp. 77-78.

#### STATEMENT

Petitioner, Polish National Alliance of the United States of North America, is a fraternal benefit society incorporated under the laws of Illinois (R. 46). It is the largest fraternal organization in the world of Americans of Polish descent (R. 106) and is licensed to do business in 27 States, the District of Columbia and Manitoba, Canada (R. 105). Petitioner is organized into 1,817 lodges, which are distributed throughout the United States (R. 133).

From its office in Chicago it "issues five (5) forms of insurance for adults" and eight types for children (R. 108, 118). As of December 31, 1941, petitioner had outstanding 272,897 insurance benefit certificates, of which 76.7 percent were held by certificate holders outside the State of Illinois (R. 137). As of the same date the amount of petitioner's insurance in force totalled \$159,683,-583.00 (R. 137).

During the year 1941, petitioner had a total income of \$5,717,344, of which \$291,982, or approximately 5 percent, was derived from assessments for its benevolent fund which is used for purposes unrelated to its insurance activities (R. 105; Bd. Exh. 9<sup>1</sup>). Of its total income during 1941, petitioner received \$3,723,365.21 from its members in the form of premiums, payments, and fees, and \$1,690,250.57 from investments, including \$90,-684.32 interest on loans to its members (R. 105; Bd. Exh. 9, p. 2).

Its total disbursements during the year 1941 amounted to \$6,046,994 (Bd. Exh. 9, p. 3, line 48). Of this sum \$1,745,015.24 was paid in death claims (*id.*, p. 3, line 1) and over \$22,000 represented

<sup>1</sup> Board Exhibit 9, which is petitioner's Annual Statement for 1941; Board Exhibit 10, which is petitioner's Statistical Manual; and Exhibit A to petitioner's answer, which is the volume containing the petitioner's Constitution and By-laws, are not contained in full in the printed record, but are a part of the record before this Court in their original form. See R. 251-252.

annuity payments (*id.*, line 4). Disbursements of about \$189,000 were made for commissions, fees, and other compensation paid for the acquisition of new business (*id.*, lines 17 and 18), while expenses incurred for the collection and remittance of payments and dues totalled \$135,453.18 (*id.*, line 25). In addition, the Alliance paid out \$2,708.19 for the travelling expenses of its organizers or agents (R. 138), and spent for advertising, printing, and stationery \$43,272.02 (Bd. Exh. 9, p. 3, line 30), of which a large percentage represented an outlay for advertising in newspapers, magazines, radio, and other media outside the State of Illinois (R. 138). Petitioner's expenses for postage, express, telegraph, and telephone charges amounted to \$19,125.95. Finally, in 1941, petitioner disbursed from its benevolent fund \$283,761.67, less than 5 percent of its total disbursements (Bdd Exh. 9, p. 3, lines 30, 48).

As of December 31, 1941, petitioner owned total admitted assets of \$30,090,835.94 (R. 105), including bonds bearing a total value in excess of \$13,000,000, stock of about \$30,000 in value, and certificate liens worth about \$1,500,000 (Bd. Exh. 9, p. 4). Petitioner's "unassigned funds" (available surplus) amounted to \$1,813,056.63, of which \$137,704.87 was held as the benevolent fund (R. 105; Bd. Exh. 9, p. 5).

Petitioner issues insurance policies or "certificates" upon the level premium plan in amounts from \$250 to \$5,000. The types of adult insurance<sup>2</sup> provided for are: Ordinary life, 20-year endowment,<sup>3</sup> endowment at the age of 65, and combined term and paid-up at age of 65 (R. 108-110). Provision for double indemnity in the event of accidental death is also offered as a rider to all of petitioner's regular policies (R. 117-118). These types of insurance are the usual stock in trade of the "old-line" American life insurance company. In all of the policies issued by petitioner the insured's right to the reserve value of the certificate is preserved through certain "non-forfeiture options." Upon the surrender of the certificate by the insured after the payment of premiums for three or more years, the insured is entitled to the full cash value of his certificate. He may also contract a loan for any amount not exceeding the cash value of the certificate. If the cash surrender or loan option is not exercised and a default occurs after payments have been made for three years or more, the certificate is automatically converted into a paid-up nonparticipating certificate for the full face amount of the certificate

---

<sup>2</sup> Petitioner's juvenile insurance business represents only a small fraction of its total business and is therefore not discussed here.

<sup>3</sup> Of this type of insurance the Alliance says (R. 116), "This form of insurance embodies a savings and term insurance feature which appeals to persons interested not only in the insurance but also the investment angle."

as term insurance for such term as the net cash value will buy when applied as a net single premium. Alternatively the insured may, within a grace period after the date of default in any payment, by application, convert the certificate into a paid-up nonparticipating life certificate to yield a reduced amount of death benefits (R. 122; Bd. Exh. 10).

All of the insurance is of the participating type, *i. e.*, the certificates provide for the payment of dividends from the available surplus after the certificates have been in force for two years (R. 112, 114-117). Petitioner extends to the insured the option of (1) withdrawing dividends in cash; (2) placing them on deposit with the Alliance to accumulate interest at a rate not less than 3 percent; (3) applying them either as a net single premium for the purchase of a paid-up addition to the certificate already in force; or (4) applying them against premium payments due on the certificate or to accelerate maturity (R. 112-113). In the same manner, if the insured does not desire that the insurance proceeds be paid in a lump sum, he may exercise settlement options whereby the proceeds are deposited with the Alliance or are paid in fixed instalments. In either case the Alliance obligates itself to pay interest of not less than 3 percent upon all sums deposited with it (R. 113).

Petitioner's members are its certificate holders. In 1938 it abolished its "social members" classi-



fication and now admits only "beneficial members," *i.e.*, insured members (R. 7-8, 54). Membership is not confined to the Polish community. Those of Lithuanian, Ruthenian and Slovak nationality and their husbands and wives, regardless of nationality, are also qualified for membership (R. 54). The class of those who may be beneficiaries is limited in no way.<sup>4</sup> Beneficiaries may be freely changed, and assignment of the certificate's cash surrender value and of accrued and declared dividends is permitted (Alliance Constitution and By-Laws, Section 37).

In addition to the scientifically computed insurance premiums, which are payable annually, semi-annually, quarterly, or monthly, a flat assessment of 21 cents per month is levied upon each member, social or beneficial, of which 18 cents is allotted to a general fund, disposed of in accordance with the decisions of the conventions of the Alliance and used for such purposes as administration expenses, financing the "Zgoda," the official organ of the Alliance, and for social and benevolent activities (R. 35, 111). The remaining 3 cents is allotted to a fund which finances a

---

<sup>4</sup> Petitioner's Constitution and By-Laws (R. 59) provide that the insured may designate his estate as beneficiary or any person or entity permitted by the laws of the State of Illinois. No limitation upon the class of those who may be beneficiaries is contained in the Illinois law. Illinois Insurance Code, Ill. Rev. Stat. (1941), Ch. 73, Art. XVII, Sec. 286.

school, Alliance College, maintained by petitioner (R. 35).<sup>5</sup>

Petitioner's business is managed by officers and directors who perform their duties in Chicago. All terms and conditions of its insurance certificates are determined, investments made; applications for insurance approved, claims and loans acted upon, and all insurance certificates and checks executed, at the home office in Chicago (R. 133-134).

Petitioner's insurance offerings are sold by paid field agents or organizers. The Alliance pays commissions to all field workers who sell insurance. The average fee is 50 percent of the first annual premium. Between twenty-five and thirty organizers sell insurance for the Alliance in designated districts on a full-time basis and supervise the activities of over 200 part-time organizers. The full-time organizers get advance commissions and also get a portion of the business obtained by the part-time organizers in their allocated districts (R. 11). In 1941, petitioner spent over \$189,000<sup>6</sup>

<sup>5</sup> The aim of the school is to provide education for members or their children at a nominal fee (R. 27).

<sup>6</sup> According to petitioner's annual statement, \$169,188.82 was expended for "commissions and fees on payments by members." \$20,127.82 was accounted for by "compensation of managers and others not paid by commission for services in obtaining new benefit protection," and \$2,598.78 was disbursed for "field supervision and travelling expenses" (Bd. Exh. 9; p. 3, lines 17-19). In addition, more than \$10,000 was spent in 1941 for advertising outside of Illinois

in commissions, fees, and other compensation for obtaining business. All of petitioner's members receive weekly the "Zgoda," the official Alliance publication (R. 135). A daily edition of the "Zgoda" appears for sale on newsstands, in Illinois, Indiana, and Michigan (R. 15-16).'

Two further aspects of petitioner's activities are intimately related to its functions as an insurer. Petitioner engages the services of the Retail Credit Company of Atlanta, Georgia, to investigate the character and financial status of the applicant for insurance. Inquiry forms are addressed by petitioner's underwriting department to the branch of the credit company which is situated closest to the applicant's home, and when returned to petitioner's office, are considered in connection with the application (R. 6, 10-11). Finally, petitioner insures itself against substandard risks by reinsuring them with the Lincoln Mutual Life Insurance Company of Fort Wayne, Indiana (R. 8-9).

In March 1941 the Office Employees' Union, No. 20732, A. F. of L., hereinafter called the Union, began an organizational campaign among petition-

(R. 138). Petitioner also promotes its activities through an official almanac which is sold throughout the United States at 50 cents a copy (R. 12).

This newspaper is a member of the United Press and has a daily circulation of about 26,000. Both the weekly and daily Zgoda are products of the Alliance Printers and Publishers, Inc., a corporation which is wholly owned, and controlled by petitioner (R. 15-16, 135-136).

er's office employees, and, by March 26, the Union included within its membership a majority of petitioner's employees in an appropriate unit (R. 194-195).<sup>\*</sup> Confronted with the successful unionization of its employees, petitioner's directors and executives set out to undermine the Union. Petitioner interrogated them respecting their union membership and activity (R. 198) and offered wage increases to the Union Chairman, provided that he "dropped all union activities and induced the other employees to do likewise" (R. 197, 201).

Despite petitioner's open antagonism, the Union, from March 26, 1941, to October 6, 1941, sought to bargain with petitioner, but to no avail (R. 195-197). Petitioner, claiming that the Act did not apply to its activities, admittedly refused to bargain (R. 195-196). On September 26, after the Union had announced its intention to strike, petitioner assured the Union that if the contemplated strike action were postponed until after the

---

<sup>\*</sup> The Board found (R. 191-194) that all office employees of petitioner's Chicago office, excluding janitors, attorneys, elected officers, the chief clerk of the auditing department, the manager of the real estate department, the inspector of the rent-collection department, rent collectors, the chief organizer of the organization department, the personal secretary to the president, the personal secretary to the general secretary, the confidential secretary to the censor (employed at Milwaukee, Wisconsin), the assistant secretary (administrative) to the general secretary, the assistant secretary (administrative) to the treasurer, and librarians, constitute a unit appropriate for collective bargaining purposes.

December 10 meeting of petitioner's Supervisory Council, employment relations would ultimately be adjusted (R. 196). Less than two weeks after this pronouncement, petitioner discriminatorily discharged a leading member of the Union, Anna Owsiak (R. 202-205). When petitioner failed to carry out a promise of reinstatement, the Union voted to strike (R. 205). The Board found that petitioner, "as a result of these unlawful acts and [its] unwavering course of antiunion conduct" caused the foregoing strike (R. 209).

Petitioner sought to break the strike by various steps calculated, as the Board found, to "impress upon the striking employees the futility of remaining members of the Union and to evade its duty to bargain collectively" (R. 209). Thus, it persisted in its refusal to bargain with the Union (R. 209), continued to make disparaging comments about the Union to Union members (R. 205-208), and, by several devices, including the publication in its official organ of false and misleading statements concerning the causes and status of the strike, urged the strikers to return to their jobs (R. 206-208).

On January 27, 1942, after the discontinuance of the strike, and again on February 9 and 11, the strikers unconditionally offered to return to work and applied for reinstatement (R. 210-213). Petitioner admittedly ignored all of these communi-

cations and, at the time of the hearing, none of the strikers had been reinstated (R. 210-213).

Upon the basis of the above facts, the Board found that petitioner had engaged in unfair labor practices and that the practices affected commerce within the meaning of the Act, and issued an appropriate order (R. 191, 213, 217-219). On August 21, 1942, petitioner filed in the court below a petition to review the Board's order (R. 221). On June 5, 1943, the court handed down its decision and entered its decree upholding the Act's applicability to petitioner, and enforcing the Board's order with modifications not here in issue (R. 240-241). On October 11, 1943, this Court granted a writ of certiorari limited to the question of the applicability of the Act to petitioner (R. 249).

#### SUMMARY OF ARGUMENT

This brief considers only the distinctive features of the life insurance industry, and petitioner's arguments as to the interpretation of the National Labor Relations Act and the charitable and benevolent nature of its activities. A more complete discussion of the constitutional questions is presented in the Government's brief in No. 354.

#### I

A. The life insurance business, in general, and that of petitioner in particular is carried out through the constant use of the channels of inter-



state communication. The contracts of insurance, issued in the main to persons in states other than that containing the home office, become effective only when approved at the home office, and are performed through the sending of money by each party to the other across state lines. These activities are both interstate and commerce. In addition to the considerations applicable to insurance generally, referred to in our brief in No. 354, the life insurance companies are engaged in the business of investment on a large scale, and also serve as financial and loan institutions for their policyholders. Such activities are undoubtedly commercial.

B. Because of its cash surrender and loan value, the policy of life insurance is an article of commerce in its own right. It has many of the attributes of a security, and has been treated as property both by Congress and by this Court. The transmission of life insurance policies across state lines is thus interstate commerce in and of itself, apart from the other aspects of the insurance business. Compare *Champion v. Ames*, 188 U. S. 321; *International Textbook Company v. Pigg*, 217 U. S. 91; *Securities and Exchange Commission v. Joiner Leasing Corp.*, No. 24 this Term. The statements to the contrary in *Paul v. Virginia* and in *New York Life Insurance Co. v. Deer Lodge County* cannot be supported.

C. Even if the insurance business be regarded as performance only of the intangible service of furnishing protection, it would still be commercial. Commerce is not limited to the purchase of physical or tangible articles. The buying of life insurance is properly treated by the purchaser as commercial to the same extent as the purchase of other commodities. Cf. *American Medical Association v. United States*, 317 U. S. 519.

D. The National Labor Relations Act extends to industries essential to interstate commerce, although not themselves engaged in it. *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197. The life insurance industry is a major source of credit to business unquestionably in interstate commerce. A substantial portion of the indebtedness of railroads and utilities, in particular, is owned by life insurance companies. We submit that an industry and an enterprise which in the regular course of business is a necessary source of credit to industries in interstate commerce is within the scope of the Federal power to relieve that commerce of burdens and obstructions.

## II

The National Labor Relations Act applies to unfair labor practices affecting commerce. If petitioner's activities are in commerce or essential

to it, petitioner comes within the terms of the Act inasmuch as a stoppage of its operations by a labor dispute would affect commerce. Both the language of the Act and its legislative history show an intention to exercise all the constitutional power of Congress over the subject regulated, not to freeze into the statute limitations expressed in prior judicial decisions which might be disapproved. There is, therefore, no basis for attributing to Congress an intention to exempt the insurance industry from the Act.

### III

Petitioner is not engaged primarily in charity or benevolence and only incidentally in the life insurance business, but the contrary. However philanthropic may have been the purposes of its founders, its activities are now substantially the same as those of the ordinary mutual life insurance company. The fact that petitioner is owned and controlled by its policy holders does not make it a charitable or non-profit organization. The members pay for what they get, and receive the profits themselves by way of dividends. Moreover, even if petitioner were a non-profit organization, it would be subject to the commerce power, inasmuch as the commerce clause reaches all interstate transactions, whether or not they are commercial in the strict sense.

## ARGUMENT

THE SCOPE OF THIS BRIEF, IN RELATION TO THAT  
FILED IN NO. 354

This case raises the same fundamental question as *United States v. South-Eastern Underwriters Association*, No. 354—whether the insurance business is subject to regulation under the federal commerce power. Although No. 354 is concerned with fire insurance, most of what is said on the constitutional issue (Point I) in the Government's brief in that case applies to life insurance as well.

For the life insurance business, just as the fire insurance business, is conducted on a nation-wide scale through the channels of interstate commerce. And the life insurance contract is performed, as is the fire-insurance contract, through the transmission of money, usually across state lines, from the insured to the company by way of premiums, and from the company to the insured or his beneficiary when the policy becomes due.\*

In one respect, life insurance is more centralized than fire. The life insurance agent is not authorized to enter into binding contracts with the insured; the application for life insurance must be sent to the home office for approval before any

---

\* The life insurance policy normally contemplates a continuous series of payments to the company over a long period, and often the company pays the insured or his beneficiary in instalments. Fire insurance policies are usually for shorter terms.

contract is made, whereas the fire insurance agent enters into the contract on behalf of the company subject only to the subsequent right of cancellation in the home office. When the life insurance policy is transmitted in interstate commerce it is a binding contract and not a blank form to be filled out. The life insurance contract also differs from the fire in that it has investment and security features which are distinctly commercial in themselves, and which have caused the policy to be regarded as a valuable "property" in the same sense as other securities.

The relationship between fire and life insurance and other industries is also not the same. Fire insurance is essential to commerce in the goods and industries insured, inasmuch as necessary credits cannot be obtained without insurance on the property. The interest of the life insurance companies in other business is derived from the investments of the billions of dollars of reserve funds which they control; the impact of these investments on the national financial and credit system cannot be overestimated. Substantial portions of the obligations of the railroads and public utilities in particular are controlled by the life insurance companies.

An obvious difference between this case and No. 354 is that it arises under the National Labor Relations Act and not the Sherman Act. The language, purposes, and history of both statutes

show that each was designed to exhaust the constitutional power of commerce over the subject regulated. Petitioner here, however, is in no position to make an argument, similar to that advanced in No. 354, that application of the Labor Relations Act to insurance will disorganize or impair the efficient operation of the industry, or interfere with the operation of the state laws regulating insurance. Whatever may be said in support of the contention that insurance differs from other industries with respect to the nature of its rate structure and the advantages and disadvantages of competition does not apply to the labor relations of insurance companies.

In this case petitioner argues that it is not in commerce because it is a fraternal benefit society not engaged in the insurance business. This feature of the case has no counterpart in No. 354.

We do not believe that any of the distinctions between this case and No. 354 are of sufficient consequence to warrant a different result. Certain features of the life insurance business nevertheless require special consideration, and petitioner's arguments as to the interpretation of the National Labor Relations Act and the "charitable and benevolent" nature of its business are not answered in our brief in No. 354. This brief will deal with these matters. For a general and full discussion of the constitutional question raised, the Court is respectfully referred to Point I of the Government's brief in No. 354.



## I

## THE LIFE INSURANCE BUSINESS IS SUBJECT TO THE FEDERAL COMMERCE POWER

### A. THE LIFE INSURANCE BUSINESS IS ORGANIZED AND FUNCTIONS THROUGH THE USE OF INTERSTATE CHANNELS

The life insurance business in the United States is of enormous size. As of 1938, there were about 125,000,000 policies in force on about 64,000,000 lives.<sup>10</sup> As of December 1942, life insurance in force exceeded one hundred and thirty billion dollars and the assets of the insurance companies more than thirty-five billion dollars.<sup>11</sup> Only a small fraction of the assets of this vast industry is held by companies doing business in only one state.<sup>12</sup> This is no accident, since the success of the life insurance business depends upon a large and diversified body of risks.

The principle of loss sharing which is basic to all insurance can only be made effective if large numbers participate in sharing the losses. This is so because the stability of the rate of loss increases with the increase in the number of indi-

<sup>10</sup> Temporary National Economic Committee *Hearings*, 76th Cong., 1st Sess., p. 1196.

<sup>11</sup> *Spectator Insurance Yearbook; Life Insurance*, 1943, pp. i, 171A, 415b.

<sup>12</sup> Gesell, G. A., and Howe, E. J., *Study of Legal Reserve Life Insurance Companies*, Monograph No. 28, Temporary National Economic Committee, Washington (1941), p. 5.<sup>2</sup>

viduals subject to the same risk. For this reason, *inter alia*, companies seek to handle a large volume of business. The relationship between the company and the individual, therefore, cannot be viewed in isolation, and the transactions of each individual with the company necessarily tend, as a matter of sound insurance practice, to involve and be a part of a large pattern. *New York Life Insurance Co. v. Statham*, 93 U. S. 24, 30-31.

The need for volume has led the companies into the interstate market. The fact that the average individual must be persuaded to buy insurance has resulted in the creation of a vast interstate distribution, servicing and marketing system, similar to that used in the marketing of other products. The mechanism of the general or direct insurance agency, the branch office, the soliciting agent, the part-time agent, and the insurance broker are all commonplaces of our distributive economy.<sup>13</sup> At the present time only one life insurance company transacts business without agents.<sup>14</sup>

It is apparent that this distribution system necessarily involves constant interstate transportation, communication and transmission of documents and money between the company and its agents. Moreover, since life insurance applications are passed on and policies issued from the

<sup>13</sup> See, Temporary National Economic Committee *Hearings*, 76th Cong., 1st and 2nd Sess., pp. 6505-6598.

<sup>14</sup> Maclean, J. B., *Life Insurance*, New York and London (1934), p. 455.

home office (R. 133-134),<sup>15</sup> there is a constant interstate course of dealing between the company and its out-of-state policy holders. Payments of premiums and claims, applications for loans, exercise of settlement options, transmission of dividends, all involve extensive interstate dealings (R. 137).

The day-to-day functioning of a life insurance company such as petitioner depends upon this constant and complex series of interstate transactions. These transactions are not casual or optional but are intrinsic to the effective functioning of an insurance company of petitioner's type.<sup>16</sup>

Thus, from its home office in Chicago, petitioner directs its field agents throughout the 29 jurisdictions in which it is authorized to transact business, and pays their commissions and traveling

<sup>15</sup> MacLean, J. B., *op. cit.*, at pp. 448-454.

<sup>16</sup> The suggestion in *New York Life Insurance Co. v. Deer Lodge County*, 231 U. S. 495, 509 that the interstate transmission through the mails of premiums to the home office and of benefits to the policy holder is merely a form of administrative centralization, not essential to the character of the business, reflects a serious misunderstanding of life insurance as it is universally practiced. Premiums or notice of their payment obviously must be received and recorded at the home office if the company is to administer its whole body of risks soundly. Obviously claims must be approved by and payments made from the home office in order that the payments be consistent with the liabilities assumed by the carrier. Likewise loans must be approved at the home office since the records of the company at the home office show the borrower's reserve.

expenses. Applications for insurance, wherever obtained, are sent to Chicago for approval. If the application is approved, the benefit certificate is remitted to the insured, 76 percent of whom are situated outside the State (R. 137). The transaction which initiates the relationship between petitioner and the insured is thus in most cases not only interstate in character but also the product of prior interstate communications and transmission of money and documents.

After the contract has been put into effect, there follows, for the lifetime of the insured (or for 20 years, or until the insured is 65 years old) a steady flow of monthly, quarterly, semiannual, or annual payments from the locality of the insured to petitioner's home office. This interstate current of funds is the lifeblood of petitioner's operations; all of its other activities are dependent on this steady flow. *New York Life v. Statham, supra.*

Flowing back to the persons named or their beneficiaries is a stream of benefit payments upon the maturity of both endowment and ordinary life policies, either in lump sums or in periodic installments, dividends, loans, interest and cash refunds upon the surrender of the policy. Further interstate communication and transmission of funds between petitioner and its widely scattered group of certificate holders are involved in the exercise of settlement options and the repayment of loans. Moreover, interstate transactions fur-

ther characterize petitioner's reinsurance dealings (*supra*, p. 9), and its relationship with the Retail Credit Company which reports upon the financial status of applicants for insurance (*supra*, p. 9).

The activities of an insurance company extend beyond the mere issuance of insurance contracts and include the performance of such contracts as well. If, therefore, the doctrine of the insurance cases be confined to the issuance of the insurance policy (cf. *Western Live Stock v. Bureau of Revenue*, 303 U. S. 250, 253), the patently commercial aspects of the remainder of petitioner's activities<sup>17</sup> would place its employees within the protection of the Act. For a strike of the employees would disrupt all these activities, and not merely the issuance of policies.<sup>18</sup>

#### B. THE LIFE INSURANCE BUSINESS IS COMMERCIAL IN CHARACTER

(1) *In general.*—In this case, as in *United States v. South-Eastern Underwriters Association*, No. 354, it is not questioned that the above activities are interstate but, rather, that they are "com-

<sup>17</sup> That the activities which succeed the making of an insurance contract may be more important commercially than those which attend the creation of the contract itself, see *Hoopston Canning Co. v. Cullen*, 318 U. S. 313, 317.

<sup>18</sup> The effect of a suspension of the operations of an insurance company is described in Mowbray, A. H., *Insurance, Its Theory and Practice in the United States* (1937), pp. 258-259.

merce." Such a contention assumes that interstate commerce in the constitutional sense requires something more than interstate intercourse and communication. As the Government's brief in No. 354 points out (pp. 17-19, 35-42), except for *Paul v. Virginia* and the cases following it which state that insurance is not commerce, the decisions of this Court show the contrary. A long series of cases<sup>19</sup> establishes that interstate commerce consists of all kinds of movement across state lines, whether or not "commercial" in the sense of business transactions, and the historical background of the commerce clause<sup>20</sup> shows that these cases were correctly decided.

But aside from this broad principle, insurance is manifestly "commercial" as that term is commonly understood. This is clear even from a threshold glance. The activities of the insurance companies are usually described as "the insurance business";<sup>21</sup> the operating units are collectively referred to as "the insurance industry." Insurance is ordinarily spoken of as "bought" or "sold,"<sup>22</sup> the sale of a policy is termed writing or obtaining new "business" (R. 10), the distribu-

<sup>19</sup> Cited and discussed at pp. 17-19 of the Government's brief in No. 354.

<sup>20</sup> See the Government's brief in No. 354, pp. 42-48.

<sup>21</sup> Internal Revenue Code, Section 201. And see cases cited in the Government's brief in No. 354, pp. 58-60.

<sup>22</sup> *Beechley v. Mulville*, 102 Iowa 602, 608, 70 N. W. 107, 109.



tion of the insurance product is the work of "producers"<sup>23</sup> who are part of a "marketing" mechanism.<sup>24</sup> It would be difficult to discuss insurance today without referring to it in commercial terms.

Moreover, particular activities of life insurance companies are impressively commercial. The persons insured and the companies perform their contracts through the transmission of money, which is obviously a subject of commerce.<sup>25</sup> The companies are engaged in the business of investing funds and managing such investments on a tremendous scale.<sup>26</sup> The Securities Act and the Securities Exchange Act are predicated on the assumption that investments are subjects of commerce, and this Court has so indicated.<sup>27</sup>

Petitioner offers its certificate holders an insurance rate upon the assumption that their contributions, when invested, will earn 3 percent interest. This investment activity, which is an integral part

<sup>23</sup> *Osborn v. Ozlin*, 310 U. S. 53, 60.

<sup>24</sup> See Stalson, J. O., *Marketing Life Insurance*, Cambridge (1942), p. 31: "The marketing function, broadly considered, is the same in life insurance as in any other industry."

<sup>25</sup> On this point, see the Government's brief in No. 354, pp. 20-21.

<sup>26</sup> Temporary National Economic Committee, *Hearings* (1940), pp. 14698, 15494, 15688-9; Timberg, *Insurance and Interstate Commerce*, 50 *Yale L. J.* 959-962, 1006-1016.

<sup>27</sup> See *Securities and Exchange Commission v. Joiner Leasing Corp.*, No. 24, this Term, decided November 22, 1943, and cases cited on pp. 40-41 of the Government's brief in No. 354.

of its business, yielded petitioner well over one and one-half million dollars in 1941 (R. 105). Certainly it could not be said that a relationship which systematically provides funds for investment is not a commercial one. Similarly, upon the security of their policies petitioner's members borrowed about \$1,500,000 in 1941 at interest (*supra*, p. 4).<sup>28</sup> These, too, are manifestly commercial transactions. The policy has other commercial uses as well. It may insure the life of a commercially valuable individual;<sup>29</sup> and it may be pledged as collateral for a loan.<sup>30</sup> It may be assigned to a creditor,<sup>31</sup> or used to improve the insured's credit rating.<sup>32</sup> When these plainly commercial aspects of the insurance relationship are viewed in the light of the fact that they are made possible by the periodic payment of a small sum of money—the classic subject, object and instrumentality of commerce—in exchange for the payment of a larger sum of money upon the happening of the event insured against, it can hardly be said that insurance is non-commercial.

<sup>28</sup> In this year (1941) petitioner received more than \$90,000 in interest upon certificate loans (*supra*, p. 3).

<sup>29</sup> *United States v. Supplee Biddle Hardware Co.*, 265 U. S. 189.

<sup>30</sup> *Chase National Bank v. United States*, 278 U. S. 327, 335.

<sup>31</sup> *Grigsby v. Russell*, 222 U. S. 149. On the assignability of a fraternal benefit certificate, see *North American Union v. Hart*, 250 Fed. 390, 394 (C. C. A. 8).

<sup>32</sup> Huebner, S. S., *Life Insurance*, New York (1935), pp. 65-70.

Inasmuch as the Government's brief in No. 354 (pp. 42-60) discloses a substantial uniformity of opinion, both in the constitutional period and since—outside of the one group of decisions and a minority of commentators thereon—that the insurance business is commercial, further elaboration of the point seems unnecessary here.

2. *A life insurance policy is an article of commerce.*—The investment features of the life insurance industry support our position that it is a business or commercial operation. This is true both as to the investment operations of the company and of the investment value of the policy to the insured.

The latter is doubly significant. If the insurance policy itself has value, it is not a mere "contract of indemnity" (*Paul v. Virginia*, 7 Wall., at 183), but a subject of commerce in its own right,<sup>33</sup> just as any other security. A security may be only a promise to pay, but it is nevertheless regarded as property, and accordingly as an article of commerce.

That a life insurance policy has often been treated as property in this sense is undeniable. The level premium plan of insurance creates a reserve upon the security of which the policy-

---

<sup>33</sup> Even apart from its reserve aspect, life insurance is not a contract of indemnity, since payment is both certain and for a face amount, not to the extent of proved financial loss. See *infra*, p. 39, n. 47. This feature of life insurance as well as the reserve value of the policy distinguish it from fire insurance.

holder may freely borrow or which he may withdraw in cash upon the surrender of his policy. The policy thus bears a value to the extent of the insured's share in the reserve. That the policy itself, to the extent of the cash surrender value, is treated as property is seen most directly in the provisions of Section 70 (a) of the Bankruptcy Act (11 U. S. C., Sec. 110 (a) (5)), which provides that the insurance policy of a bankrupt which has a cash surrender value payable to himself, his estate or personal representative "shall pass to the trustee as assets unless the bankrupt shall pay to the trustee the cash surrender value" See *Burlingham v. Crouse*, 228 U. S. 459, 471-472; *Cohen v. Samuels*, 245 U. S. 50.<sup>34</sup>

The Court has recognized the desirability of clothing insurance policies with the characteristics

<sup>34</sup> In the first case the Court stated that "life insurance policies are a species of property" (228 U. S. at 471), and in the second applied the provisions of the Bankruptcy Act described in the text to an insurance policy which designated a beneficiary other than the bankrupt subject to a reserved absolute power in the bankrupt to change the beneficiary. It is to be noted that petitioner's bylaws (Section 37) grant its members the right to change the beneficiary designated in the certificate at any time. The revocable character of the beneficiary designated in the certificate enhances the property value of the certificate since the beneficiary's interest is a mere expectancy which is subordinate to that of the assignee or pledgee. See *Baker, Assignments of Life Insurance Policies*, 27 Marquette Law Rev. 171, 181-182 (1943); *Aetna Life Insurance Co. v. Phillips*, 69 F. (2d) 901 (C. C. A. 10); *Carnes v. Franklin Life Insurance Co.*, 81 F. (2d) 800 (C. C. A. 5).

of property even apart from the reserve value represented by the policy. Thus, in *Grigsby v. Russell*, 222 U. S. 149, 156, the Court upheld the right of an owner of a policy to sell it despite the absence of an insurable interest in the vendee and pointed out that, "life insurance has become in our days one of the best recognized forms of *investment and self-compelled saving*. So far as reasonable safety permits, it is desirable to give to life policies *the ordinary characteristics of property*." This is recognized by the Bankruptcy Law, § 70, which provides that unless the cash surrender value of a policy like the one before us is secured to the trustee within thirty days after it has been stated the policy shall pass to the trustee <sup>as assets</sup>. Of course the trustee may have no interest in the bankrupt's life. To deny the right to sell except to persons having such an interest [an insurable interest in the life of the insured] is to diminish appreciably the value of the contract in the owner's hands." [Italics supplied.] See also *Midland Bank v. Dakota Life Ins. Co.*, 277 U. S. 346.

The property value of the life policy in level premium insurance has many of the characteristics of a security interest. This is so because a large part of the reserve of a life insurance company represents investment income. Thus, petitioner's investment income for 1941 constituted almost one-third of its total income (*supra*,

p. 3).<sup>35</sup> Similarly, the dividends paid by mutual companies are related in characteristics to income from securities. Pointing out in *Penn Mutual Life Insurance Co. v. Lederer*, 252 U. S. 523, 531, that "in level-premium insurance, while the motive for taking it may be mainly protection, the business is largely that of savings investment," the Court there held that dividends issued by a mutual life insurance company involved a return based on investment income. See also *Lucas v. Alexander*, 279 U. S. 573, 580.

As a reserve accumulates, the policy clearly emerges as an investment contract resembling the conventional security, to which is attached a special provision in the event of death.<sup>36</sup> Each policy holder in effect owns a cross-section of his company's investment portfolio measured by the extent of his reserve. Whatever the label that is attached to this interest, it has recognized status as property.<sup>37</sup> As this Court has observed, "a

<sup>35</sup> Compare *Duffy v. Mutual Benefit Life Insurance Co.*, 272 U. S. 613, where approximately one-half of the company's assets represented investments.

<sup>36</sup> That the life insurance contract is primarily an investment program, see *Commissioner of Internal Revenue v. Illinois Life Insurance Co.*, 80 F. (2d) 280, 282 (C. C. A. 7).

<sup>37</sup> Whether or not life insurance policies are technically securities is, of course, of no importance in deciding whether their value clothes them with the characteristics of property. It is, however, noteworthy that ordinary life insurance policies bear a marked resemblance to investment



policy of life insurance is a contract susceptible of ownership like any other chose in action."<sup>38</sup>

A document which represents and bears upon its face the value (R. 122) of the interest of the insured in the carrier's reserve, which can upon its surrender be converted to cash,<sup>39</sup> which is an asset in the event of bankruptcy, and which may be pledged to a bank for a loan,<sup>40</sup> can scarcely be said to be so devoid of property characteristics as not to constitute a subject matter of commerce even in the most restricted sense.

Thus, even if commerce were a highly technical concept, confined to property transactions, interstate dealings which give rise to and improve the value of life insurance policies would be interstate

---

certificates of the "accumulative" type, which are investment contracts on the installment plan with provisions for payments of the face value of the certificates upon maturity and cash surrender and loan options. See *Wilcutts v. Investor's Syndicate*, 57 F. (2d) 811 (C. C. A. 8); *National Thrift Corporation v. Welch*, 56 F. (2d) 1077 (S. D. Cal.), appeal dismissed by stipulation, 66 F. (2d) 1009; Report by *Securities and Exchange Commission on Investment Trusts and Investment Companies*, 75th Cong., 1st Sess. (1939), pp. 1, 43-44.

<sup>38</sup> *Burnet v. Wells*, 289 U. S. 670, 679.

<sup>39</sup> The surrender requirement is not a formal one; the physical surrender of the policy is normally required before cash is made available. See *Martin v. N. Y. Life Insurance Co.*, 104 F. (2d) 573 (C. C. A. 7); *United States v. Metropolitan Life Ins. Co.*, 41 F. Supp. 91, 93 (S. D. N. Y.).

<sup>40</sup> *Chase National Bank v. United States*, 278 U. S. 327, 335.

commerce. Two cases which make this conclusion clear beyond question are *Champion v. Ames*, 188 U. S. 321, and *International Textbook Co. v. Pigg*, 217 U. S. 91.

In *Champion v. Ames* (the *Lottery* case) the Court held that a lottery ticket was a subject of commerce. Plainly indicating that the subjects of commerce were not limited to articles of "real or substantial value in themselves" (188 U. S., at 353), the Court nevertheless found that lottery tickets had sufficient value in themselves to constitute a subject matter of commerce. Certainly a contingent stake in an illegal enterprise cannot be said to be a more appropriate subject of commerce than a life insurance policy which not only has fixed cash and loan values but possesses other versatile property incidents as well. Cf. *Guggenheim v. Rasquin*, 312 U. S. 254, 257.

The *Pigg* case presented to the Court the question whether a correspondence course constituted commerce. As in the *Lottery* case, the Court emphasized the fact that mere interstate communication furnished a sufficient basis for the application of the Federal commerce power, "especially where, as here, such intercourse and communication really relates to matters of regular, continuous business and to the making of contracts and the transportation of books, papers, etc., appertaining to such business" (217 U. S., at 107). In the case at bar, the communications upon which petitioner's busi-

ness is based likewise relate to "the making of contracts." The sole observable difference in the two cases is that in one policies instead of books are sent in interstate channels and are the subjects of communication. Constitutional power cannot be made to turn upon such a distinction.

These cases are, we believe, inconsistent with *New York Life Insurance Co. v. Deer Lodge County*, 231 U. S. 495, the most recent of the series of cases announcing that insurance is not commerce.<sup>41</sup> That case, involving the validity of a Montana tax on insurance companies, is the only one of the group of cases holding that insurance is not commerce that purports to consider the distinctive character of life insurance.<sup>42</sup> The Court, however, accepted the reasoning of the previous insurance cases despite the unique characteristics of the life insurance business and the life insurance policy.

In that case the company contended that the constant use of the mails for the interstate trans-

---

<sup>41</sup> That the *Deer Lodge* and other insurance cases were concerned primarily with sustaining state legislation affecting insurance, and are distinguishable upon that and other grounds, is pointed out in the Government's brief in No. 354, pp. 22-34.

<sup>42</sup> *Paul v. Virginia*, in which the doctrine was originally announced, dealt with fire insurance, which lacks the investment features of level premium life insurance. In *New York Life Insurance Co. v. Cravens*, 178 U. S. 389, the Court, though dealing with life insurance, merely perfunctorily repeated the conclusions of the previous cases.

mission of premiums and claims constituted interstate commerce. Without rejecting the factual basis for this contention, the Court rejected the argument for the asserted reason that such interstate transactions were merely the result of a centralized control which is not essential to the carrier's business. Apart from the fact that the distinction between necessity and choice is not a valid one in determining the existence of interstate commerce (cf. *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211, 244-245), it is undeniable that the life insurance business is inherently a centralized one (see *supra*, p. 21, n. 16). Certainly it would be much simpler for a correspondence school to localize its arrangements than for a life insurance company, which quotes rates and erects a risk structure on the basis of national aggregates, to maintain separate geographic reserves and departments of issue and to receive and record premium payments locally.

Just as the *necessity* of interstate communication fails to distinguish the *Pigg* and *Lottery* cases, so the Court's attempted distinction in terms of *subject matter* is equally invalid. Lottery tickets and a correspondence school course were termed "property" in contrast to life insurance policies which the Court termed "mere personal contracts." It cannot be said that the Court was unaware of the value of the life insurance policy or its commercial uses, for it acknowl-

edged that such policies were in the category of instruments "evidencing a valuable right" and apparently in the same class as foreign bills of exchange (231 U. S., at 510).<sup>43</sup> It would appear, however, that in the estimation of the Court, the life insurance policy failed to reach the "property" level of a lottery ticket because its use as property after the issuance of the policy was "by the insured, not by the insurer" (231 U. S., at 510). This distinction plainly has no constitutional validity.

The apparent conflict of the *Deer Lodge* case with established constitutional doctrine is underscored by the decision of this Court in *Securities and Exchange Commission v. Joiner Leasing Corp.*, No. 24, this Term, decided November 22, 1943. In that case a leasing corporation acquired by assignment gas and oil leases on a tract of land upon which it arranged for the drilling of a well. Upon the representation that the well was being drilled, the corporation sold assignments of leasehold interests in specific portions of the tract. The sales, held by the Court to be in commerce, were in effect sales of real estate coupled with an economic inducement to share in the fruits of a speculative venture. Certainly a sale of a specific

<sup>43</sup>The Court did not, however, refer to the fact that the life insurance policy of the level premium type has a cash value which not only clothes it with value as a chose in action but also amplifies its commercial possibilities.

interest in real estate is "personal," and as the Court observed in the *Deer Lodge* case (231 U. S., at 510), "certainly nothing can be more immobile." The speculative values annexed to the real estate contract can hardly be said to endow the instrument with qualifications as a subject of commerce superior to those of the life insurance policy. So to hold would be to deny the teaching that "Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business" (*Swift and Co. v. United States*, 196 U. S. 375, 398), and to define the scope of Federal power in terms of the refinements of negotiability. Cf. *Rearick v. Pennsylvania*, 203 U. S. 507, 512.

#### C. THE PURCHASE OF THE SERVICE OF INSURANCE PROTECTION IS IN COMMERCE

As we have seen, the life insurance companies are in commerce because they are engaged in business, in the ordinary sense of that term. Their business activities have substantial tangible attributes, all of which are commercial. The contracts, around which the business revolves, are performed through the transmission and receipt of money; the business is conducted through the constant use of the facilities of interstate communication; and the insurance policy, as a security, is itself an article of commerce.

But even apart from these tangible aspects, if the insurance business were regarded merely as



the performance of the intangible service of furnishing protection, it would still be commercial. Commerce is not limited to the purchase of physical commodities; it encompasses the entire "economic order."<sup>44</sup> If persons are willing to pay for something, tangible or intangible, because of its value to them, the transaction of purchase is a commercial one.

Unquestionably the ordinary person would regard the purchase of life insurance protection as commercial; in the main he would distinguish it from the purchase of tangible commodities only in that it is likely to constitute a more serious drain upon his budget.<sup>45</sup> The fact that life insurance

<sup>44</sup> See the brief for the Government in No. 354, p. 45.

<sup>45</sup> The fact that life insurance is a standard item in the family budget is abundantly demonstrated by numerous budget and cost-of-living studies scientifically allocating basic expenditures on a variety of income levels. Indeed, a field study undertaken by the Securities and Exchange Commission and issued by the Temporary National Economic Committee shows not only that 66% of all men, women, and children in a survey of 2,132 families carried life insurance, but that the lower the family income, the greater the dependence upon life insurance. Monograph No. 2, *Families and their Life Insurance—A Study of 2,132 Massachusetts Families and their Life Insurance Policies*, Washington (1940), pp. 36, 37, 46, 56. In Stecker, M. L., *Intercity Differences in Costs of Living in March 1935, 59 Cities*, W. P. A. Research Monograph XII, Washington (1937), pp. 86, 120, both maintenance and emergency budgets for manual workers contain allowances for life insurance; in Stecker, M. L., *Quantity Budgets For Basic Maintenance and Emergency Standards of Living*, W. P. A. Research Bulletin, Washington (1936), p. 54, it is observed that "Life insurance in some form is considered a necessity by almost all

protection is a service or facility should not be permitted to obscure its fundamental resemblance

industrial, service, and other manual workers and members of their families." See also Weiss, G. S., Waite, M., and Stitt, L., *Factors to be Considered in Preparing Minimum-Wage Budgets for Women*, U. S. Dept. of Agriculture, Pub. No. 324, pp. 34-35; *Cost of Living for Women Workers and Minors Who Come Under the Provisions of the Minimum Wage Law of the State of New Jersey*, N. J. Dept. of Labor, Minimum Wage Bureau (1938), p. 29 (insurance included both in "adequate" and "sustenance" budget); *Quantity and Cost Budgets for Three Income Levels*, Heller Committee for Research in Social Economics, Berkeley, Cal. (1942), p. 16 (family budget for executive), p. 20 (family budget for white-collar worker), p. 24 (family budget for a wage-earner); *Cost of Living for Women Workers*, N. Y. State Dept. of Labor, Division of Women in Industry (1942), p. 35.

Budgets for dependent families receiving some form of public or private assistance also provide for life insurance payments, even though such insurance contains a savings element. Thus, in the *Chicago Standard Budget for Dependent Families*, Chicago (1937), it is pointed out (at p. 30) that "Every family desires a feeling of security against illness, death, and emergencies. Most low-income families seek this security in various kinds of insurance." This work also points out (at p. 40) that the budget for a self-supporting family must likewise provide for insurance "if it is to avoid dependency when such emergencies as death or incapacity of the wage earner occur." Similarly, in *Budget Standards For Family Agencies in New York City*, New York (1938), life insurance is included as an item in the budget, and it is pointed out (at p. 40) that "Life insurance is commonly carried because of the security it provides. In low-income families where there are no other savings, a small insurance policy can be depended upon to meet unforeseen emergencies and provide funeral costs." See also *Suggested Family Budget At Minimum Cost*, Bureau of Aid to Dependent Children, Division of Public

to other commodities.<sup>46</sup> Thus, as in the case of a physical commodity, the insured buys a fixed and measurable amount of protection. The life insurance policy is not a contract of indemnity in the sense that payment will be made only to the extent of proved financial loss; the insured is normally certain to recover the face value of his policy.<sup>47</sup> Moreover, as in the case of any commodity, the buyer can, subject to certain limitations, increase the quantity of protection purchased by paying a larger premium.

As is usually the case with things we buy, the payment of the price entitles the payer to the present enjoyment of the protection bought.

Assistance, Columbus, Ohio (1937), p. 38; Hinton, Jessie, *Budget Guides For Families Receiving Public Assistance*, Md. Board of State Aid and Charities, Baltimore (1937), p. 51; *Report of the Budget Council of Boston* (n. d.), p. 58; *Monthly Minimum Standard Budget, City of Cincinnati*, Department of Public Relief (1940), p. 6; *Cost of Living For Aged Persons*, Bureau of Research and Statistics Memorandum No. 53 (1943), p. 30.

<sup>46</sup> In *Beechley v. Mulville*, 102 Iowa 602, 608, 70 N. W. 107, 109, the court stated, "insurance is a commodity. 'Commodity is defined to be that which affords advantage or profit.' Mr. Anderson, in his Law Dictionary, defines the word as 'convenience, privilege, profit, gain; popularly, goods, wares, merchandise.' It is common to speak of selling insurance. It is a term used in insurance business, and law writers have, to quite an extent, adopted it."

<sup>47</sup> The policy is a contract of indemnity in the limited sense that only with an insurable interest in the life insured may take out such a policy, though the insured has been held to have an unlimited insurable interest in his own life. Vance on *Insurance* (2d ed. 1930), pp. 80-81.

Personal Security  
 General Security

Again, as in the case of ordinary wares, the price of insurance is quoted and it is customarily sold on the basis of standardized units. Finally, as with ordinary articles of merchandise, the cost of protection to the consumer bears a definite relationship to the insurer's cost of providing it, a cost which reflects the outlays needed to cover the normally expectable risks, expense loadings, and interest earnings."

The cost of providing insurance protection for those who do not die is an important element in the financial operation of the life insurance business as it is conducted by petitioner. As one actuary<sup>40</sup> points out, under the life insurance system of the type here involved, "every policyholder or member receives something of definite money value which has cost the company something. This is the *protection or insurance* which he has had and which he would not have had if he had not undertaken to pay his premium or assessment." Courts

<sup>40</sup> Favorable changes in these items are, as is ideally the case with savings in the production or distribution of physical commodities, passed on to the insured. However, generally speaking, all but the most drastic changes in mortality, interest, and expense rates are, in participating life insurance, reflected not in a change in the premium scale but in a change in the dividend scale. See Rydgren, A. A., "*The Significance of Reduced Interest Earnings*," in *Life Insurance, Trends and Problems*, Philadelphia (1943), pp. 80-81.

<sup>41</sup> Joseph M. Maclean (Associate Actuary, Mutual Life Insurance Co. of N. Y.) in *Life Insurance*, New York and London (1939), pp. 3-4.

similarly have recognized that the protection offered by life insurance must be assigned a pecuniary value. *Lovell v. St. Louis Mutual Life Insurance Co.*, 111 U. S. 264, 274; *London Shoe Co. v. Commissioner of Internal Revenue*, 80 F. (2d) 230 (C. C. A. 2); *Century Wood Preserving Co. v. Commissioner of Internal Revenue*, 69 F. (2d) 967 (C. C. A. 3).

Economists and insurance authorities have likewise described the obtaining of insurance protection as in the same economic category as the purchase of tangible commodities. As one authority<sup>20</sup> has said:

But it is not so much the delivery of the paper which represents the contract as the purpose contemplated in the contract which should claim our special attention. Insurance must be regarded not as the mere delivery of a policy, but, as the exchange of an economic good, intangible. It is true, yet real, for a definite consideration; and here, perhaps lies the difficulty in seeing that insurance at bottom is an economic good, resembling tangible commodities which are bought and sold. Insurance companies

<sup>20</sup> Huebner, S. S., "*Federal Supervision and Regulation of Insurance*," *Annals of the American Academy of Political Science*, Vol. XXVI, No. 3, Nov. 1905, pp. 703-704. In another place (*The Economics of Life Insurance*, New York and London (1927), p. 120), this writer points out that "Life insurance is not intangible and vague . . . . Its very purpose is to render tangible and definite the intangible elements in our economic life."

send their agents from state to state and from country to country to sell to the public for a stipulated price a certain utility, a right to be indemnified upon the happening of a contingency, or in other words, an economic good. If insurance were not a utility of actual value, there would not be so many millions paying their hard cash in order to obtain it.

The precise nature of the economic service which insurance performs has thus been described by Professor E. R. A. Seligman:<sup>51</sup>

Like transportation, insurance falls under the head of exchange of wealth, while exchange, as we know, is itself a species of production. Improved transportation reduces the cost of having a commodity in one place become a more valuable commodity in another place; improved insurance reduces the cost of having the uncertainty of the future change into the more valuable certainty of the present. Transportation overcomes the disadvantages of space; insurance overcomes the disadvantages of time. Transportation is productive because it increases space utilities; insurance is productive because it increases time utilities.

The purchase of life insurance protection is thus commercial in character because it involves the classic type of commercial transaction: the exchange of money for a value. Moreover, such a

---

<sup>51</sup> In *Principles of Economics*, N. Y. (12th Ed. 1929), p. 607.



transaction is not isolated in character; insurance protection is bought by millions of Americans and is regarded as a necessity.<sup>52</sup> Eloquent proof of these facts is present in the size, premium income, and assets of the American insurance companies. See p. 19, *supra*.

That commerce is not limited in scope to the purchase of tangibles has been frequently recognized. In his concurring opinion in *Gibbons v. Ogden*, 9 Wheat. 1, 229 (quoted in the Government's brief in No. 354, p. 36), Mr. Justice Johnson stated that commerce included—

labor, exchange, transportation, intelligence, care, and various mediums of exchange \* \* \*

An insurance transaction involves the entry into commerce of "intelligence, care, and various mediums of exchange."

In *Jordan v. Tashiro*, 278 U. S. 123, the Court construed a treaty between the United States and Japan authorizing Japanese citizens to lease land "for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens," to include the leasing of land for and the operation of a hospital. And in *American Medical Association v. United States*, 317 U. S. 519, the Court held that a plan for the performance of group medical service and care was trade. We

---

<sup>52</sup> See n. 45, *supra*, pp. 37-39.

believe that the Court's decision that Group Health Association was "engaged in business or trade" (317 U. S. at 528) establishes that life insurance is commerce. If provision for benefits in kind of a highly personal nature upon the occurrence of the contingency of ill health is a "trade" then certainly the broader term "commerce" includes within it the payments of money upon the occurrence of death. If an arrangement which is designed to protect the individual against the risks of excessive medical expenses is subject to the commerce power, what basis exists for excluding from that power a type of insurance much more broadly protective in scope, which has, indeed, come to be regarded as an every-day necessity and which plays a vital role in the functioning of our entire economy?

Insurance protection is plainly a commercial commodity in the same category as other services which have been held subject to Federal power. See, in addition to the cases discussed above, *Electric Bond and Share Co. v. Securities and Exchange Commission*, 303 U. S. 419, 432; *Atlantic Cleaners and Dyers v. United States*, 286 U. S. 427; *United States v. Union Pacific R. R. Co.*, 226 U. S. 61. The provision of a service for money is commerce. The relationship between petitioner and its members is not unlike the servicing arrangement between the defendant holding company and its sub-

sidiaries in the *Electric Bond and Share* case, *supra*. Here, as in that case, the interstate distribution of a service "involves continuous and extensive use of the mails and instrumentalities of interstate commerce \* \* \*" (303 U. S. at 432-433). The transmission of applications and premiums which initiate the carrier's liability, of policies which describe it, of premiums which keep it alive, of death claims and benefits which terminate it, are all unquestionably commerce because they involve either dealings in money, an instrumentality of commerce, or "communication of a business nature" (*Associated Press v. National Labor Relations Board*, 301 U. S. 103, 128).

D. THE LIFE INSURANCE BUSINESS SUBSTANTIALLY AFFECTS INTERSTATE COMMERCE BECAUSE OF ITS IMPORTANCE AS A CREDIT INSTITUTION

Whether or not the statements found in *Paul v. Virginia* and other cases cited by petitioner (Br. 15) to the effect that insurance is not commerce have present vitality, petitioner is, in any event, subject to the Act. As the court below held (R. 235), "Even though petitioner's contention that it is not directly engaged in interstate commerce be tenable, it would still be faced with an unsurmountable barrier. As already noted, the power of the Board is not limited to commerce but includes 'affecting commerce,' which Congress has

defined as 'burdening or obstructing commerce of the free flow of commerce.'"<sup>55</sup> Cf. *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197.

From what has been already said with respect to the resemblance of a life insurance policy to an investment contract (*supra*, pp. 29-31), it is apparent that life insurance is an investment industry. The advance accumulation of capital against the occurrence of future contingencies which is implicit in the level-premium system of life insurance, the fact that the premium rates reflect an anticipated investment yield, and the banking functions engaged in by life insurance companies, including petitioner—all of these features, which are inherent in the life insurance business, combine to place the life insurance companies in a dominant position in the investment field. Moreover, since the funds available to the companies for investment are savings rather than short-term credits, they are peculiarly adaptable to the construction and development of commercial enter-

---

<sup>55</sup> Moreover, the same consideration condemns petitioner's attempt to bring itself outside of the scope of the commerce power as exercised in the Act by resort to its "non-profit" character. "It is the effect upon interstate or foreign commerce, not the source of the injury, which is the criterion." *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 222; *United States v. Wrightwood Dairy Co.*, 315 U. S. 110, 114.

prises." Finally, considerations of safety and the shifting demands of the investment market have resulted in such extensive diversification and geographic dispersion of insurance company investments that every vital aspect of our productive economy has been influenced by the investment activities of insurance companies.<sup>54</sup>

The extent of life insurance investment activities may be quickly gleaned from the fact that the 26 largest life insurance companies held in 1938 an average of less than 3 percent of their huge assets in cash.<sup>55</sup> At the end of 1941, petitioner's cash assets constituted a comparable percentage of its total assets (Bd. Exh. 9, p. 4). Life insurance companies have an annual income of over \$5,000,000,000, and assets available for investment of 35 billion dollars.<sup>57</sup> It has been esti-

<sup>54</sup> See Gesell, G. A. and Howe, E. J. *Study of Legal Reserve Life Insurance Companies*, Temporary National Economic Committee, Monograph No. 28, Washington (1941), pp. 342, 365.

<sup>55</sup> The authorities referred to in the preceding footnote, *op. cit.*, at p. 6, have pointed out that "the purely dimensional aspects of the life insurance business are so staggering, . . . that it is difficult to appreciate the significance of insurance in the national economy." See also Moulton, H. G., *The Financial Organization of Society*, Chicago (1931), p. 316; Timberg, *Insurance and Interstate Commerce*, 50 Yale Law Journal, 959-962, 1006-1017.

<sup>56</sup> Gesell and Howe, *op. cit.*, *supra*, n. 54, at p. 355.

<sup>57</sup> *Spectator Insurance Yearbook, Life Insurance*, 1943, pp. i, 171A, 415b.

W

mated<sup>58</sup> that as of the beginning of 1938, the life insurance industry held 11.6 percent of our entire federal debt, 6.7 percent of the municipal and state debt, 17.4 percent of the railway debt, 18.2 percent of the utility debt, 10.5 percent of all farm mortgages, and 13 percent of all urban mortgages. In 1937 and 1938 the life insurance industry purchased more corporate bond and note issues than all other investment groups combined.<sup>59</sup>

The credit which is thus extended to interstate enterprises and instrumentalities is vitally necessary to their functioning.<sup>60</sup> The extensive character of the companies' investment activity in interstate industrial and transportation enterprises combined with the fact that such activity is dictated by the nature of the insurance business justifies the conclusion that the relationship of the companies to interstate commerce is close and substantial.<sup>61</sup>

<sup>58</sup> By Ernest Howe, Chief Financial Adviser, Insurance Section, Securities and Exchange Commission in *Hearings* before the Temporary National Economic Committee, 76th Congress, 3rd Sess., Washington (1940), pp. 14700-14726.

<sup>59</sup> *Hearings*, cited in the preceding footnote, at pp. 1217, 1218, 1222.

<sup>60</sup> The dependence of commerce upon such credit is, as the court noted in *National Labor Relations Board v. Bank of America*, 130 F. (2d) 624, 626 (C. C. A. 9), certiorari denied, 318 U. S. 791, "as marked as was its dependence upon the electric energy furnished by the intrastate utilities involved in *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197."

<sup>61</sup> *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41.



In its investment activities petitioner is a reduced image of the industry of which it is a part. It, too, amasses the savings of its members which it redistributes into the channels of industry and trade. It has assets of over \$30,000,000, most of which it must invest if it is to operate successfully. Its investment portfolio shows that, like the industry as a whole, it supplies credit to interstate enterprise. As of December 31, 1941, it owned bonds of a large number of railroad, utility, and industrial corporations engaged in interstate commerce (Bd. Exh. 9, pp. 14 L to 14 N). The acquisition of securities is an important part of petitioner's business. That this is so is readily seen from the fact that in 1941 alone, petitioner acquired securities in the amount of \$11,000,000, and sold or redeemed securities in the amount of \$7,000,000 (Bd. Exh. 9, pp. 17 D and 17 L).

We submit that an industry and an enterprise which in the necessary and regular course of business is a necessary source of credit to industries in interstate commerce is within the scope of the federal power to relieve that commerce of burdens and obstructions. *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197; *National Labor Relations Board v. Bank of America*, 130 F. (2d) 624, 626 (C. C. A. 9), certiorari denied, 318 U. S. 791. And it is of no constitutional significance either that petitioner's contributions to such commerce are relatively small

(*Wickard v. Filburn*, 317 U. S. 111; *National Labor Relations Board v. Fainblatt*, 306 U. S. 601, 606; *United States v. Darby*, 312 U. S. 100, 123; *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58), or that a substitute supply of credit would be available in the event of an interruption or cessation of petitioner's activities because of a labor dispute. *National Labor Relations Board v. Bradford Dyeing Ass'n*, 310 U. S. 318, 326.

That a cessation or restriction of petitioner's operation would result from a strike is patent. The operations of acknowledgment, recording and depositing of premiums, prime requisites to the orderly functioning of petitioner's business, would be rendered impossible. The regular movement of funds into the investment market would be halted at its source in Chicago and business would be deprived of capital, for want of essential administrative machinery. Similarly, the handling of new applications with the care required to secure and maintain the risk structure would of necessity be dispensed with. Collections of premiums in the field would inevitably suffer because of the disruption of the regular clerical and supervisory procedures in the central office. The placement of industrial and commercial investments would in consequence be adversely affected not only because of the interruption to the operations by which lending activities are car-

ried out, but also because of the shutting off of new funds. Normal handling, management, liquidation and redistribution of old investments would likewise be affected.<sup>62</sup>

## II

### CONGRESS DID NOT INTEND TO EXEMPT EMPLOYERS ENGAGED IN THE INSURANCE BUSINESS FROM THE NATIONAL LABOR RELATIONS ACT

The National Labor-Relations Act authorizes the Board to prevent unfair labor practices "affecting commerce." Section 10 (a). Commerce is defined (Section 2 (6)) as meaning "trade, traffic, commerce, transportation, or communication among the several states." "Affecting commerce" is defined (Section 2 (7)) as meaning "in commerce, or burdening or obstructing commerce, or the free flow of commerce, or having led or tending to lead to a labor dispute burden-

---

<sup>62</sup> As early as 1916 a strike of insurance agents in New Jersey, New York, and Pennsylvania necessitated the intervention of the United States Department of Labor. U. S. Department of Labor, *Annual Report, 1917*, pp. 41, 58; *ibid.*, *Annual Report, 1918*, p. 52; New York Times, July 26, 1916, p. 6:3, July 28, 1916, p. 9:6, July 29, 1916, p. 10:5, August 4, 1916, p. 2:5, August 12, 1916, p. 7:8; *The Prudential Strike*, Weekly Underwriter, July 29, 1916, pp. 106-107; *The Insurance Strike*, The Spectator, August 3, 1916, p. 45; New Jersey Department of Labor, *39th Annual Report of the N. J. Bureau of Industrial Statistics for the Year ending October 31, 1916*, p. 262. An even earlier strike of the agents of the Metropolitan Life Insurance Company is mentioned in *The Insurance Strike*, Pacific Underwriter, July 25, 1916, p. 266.

ing or obstructing commerce, or the free flow of commerce."

The test of the Act's application, as set forth in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41, is: Would "stoppage of \* \* \* operations by industrial strife" in the enterprise in question result in substantial interruption to or interference with interstate commerce? When the operations in question are inherently interstate commerce, this test is satisfied without further showing. *Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board*, 301 U. S. 142; *Associated Press v. National Labor Relations Board*, 301 U. S. 103. Where the operations are not interstate, jurisdiction is established when the conduct of interstate commerce is dependent upon the operations in question. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41; *Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, 303 U. S. 453; *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197; *National Labor Relations Board v. Fainblatt*, 306 U. S. 601.

We believe that the Act applies to petitioner upon each of these two grounds. Petitioner is subject to congressional regulation under the commerce power because it is directly engaged in interstate commerce. see pp. 19-45, *supra*. Moreover, an independent basis for the application of

the Act to petitioner is created by the effect of its operations upon interstate commerce. See pp. 45-51, *supra*.

Petitioner argues, however, that because of this Court's prior decisions that insurance was not commerce, Congress did not intend the Act to reach the insurance industry. The Court has never held respecting any aspect of the insurance business that it did not "affect commerce"; indeed, *Thames & Mersey Ins. Co. v. United States*, 237 U. S. 19, strongly suggests the contrary conclusion. Thus, if Congress had intended to restrict the word "commerce" in the Act to commerce as defined by previous decisions of the Court, prior decisions in no way afford a standard as to congressional intent in using the phrase "affecting commerce."

Petitioner's contention is similar to that made by appellees in No. 354, and the answer is in many respects the same as that suggested in Point II of our brief in that case. The language and history of the National Labor Relations Act, as of the Sherman Act, show an intention to exercise all congressional power under the commerce clause, an understanding that the application of the constitutional terms employed would be left to the courts, and a recognition that in prior decisions this Court had held production not subject to the commerce power. The legislative atmosphere at the time of the passage of the Na-

tional Labor Relations Act, however, was much more challenging to decisions restricting the scope of the commerce power; it was undoubtedly contemplated that the Court would be called upon to reexamine some of its past rulings.

Furthermore, many of the arguments raised by appellees in No. 354 are not available to petitioner here. It cannot be—and is not—claimed that Congress could not have intended the Labor Relations Act to apply to the insurance business because of special circumstances which differentiate insurance from other industries. Whatever may be said as to the need for special treatment of the insurance business from the standpoint of competition has no counterpart in the labor field. There is no reason why insurance labor relations cannot be governed by the same rules applicable to industry generally.

Nor is it argued here that application of the Labor Relations Act to insurance will nullify any system of state legislation. We know of no state law relating to the insurance industry which might be inconsistent with the Act.

Finally, it cannot be, and is not, contended here that there has been any long administrative or other practice which has caused the insurance companies to believe that they were not subject to the Act. The National Labor Relations Act has been law only eight years, not fifty. In that time the Board has entertained 19 proceedings involv-



ing insurance companies," and this is the first of these cases which has been taken to court.

Inasmuch as petitioner's argument rests upon the supposed intention of Congress to freeze into the Act the constitutional doctrine of prior decisions, it is necessary to elaborate only in that connection. The statutory definition of "commerce," which uses the language of the Constitution with precautionary additions, obviously was intended to be as broad as the constitutional

---

<sup>100</sup> *Matter of Washington Branch of the Sun Life Insurance Company*, 15 N. L. R. B. 817 (1939); *Matter of Eureka Maryland Assurance Corp.*, 17 N. L. R. B. 381 (1939); *Matter of Home Beneficial Association of Richmond, Va.*, 17 N. L. R. B. 1027 (1939); *Matter of Equitable Life Insurance Co.*, 21 N. L. R. B. 371 (1940); *Matter of Life Insurance Co. of Virginia*, 24 N. L. R. B. 411 (1940); *Matter of John Hancock Mutual Life Insurance Co.*, 26 N. L. R. B. 1024 (1940); *Matter of Life Insurance Co. of Virginia*, 29 N. L. R. B. 246 (1941); *Matter of Life Insurance Co. of Virginia*, 31 N. L. R. B. 674 (1941); *Matter of Supreme Liberty Life Insurance Co.*, 32 N. L. R. B. 94 (1941); *Matter of Life Insurance Co. of Virginia*, 38 N. L. R. B. 20 (1942); *Matter of Colonial Life Insurance Co. of America*, 42 N. L. R. B. 1177 (1942); *Matter of Metropolitan Life Insurance Co.*, 43 N. L. R. B. 962 (1942); *Matter of Prudential Insurance Co. of America*, 46 N. L. R. B. 436 (1942); *Matter of Northwestern Mutual Fire Association, Northwest Casualty Company, & E. M. Greenwood*, 46 N. L. R. B. 825 (1943); *Matter of Peoples Life Insurance Co. of Washington, D. C.*, 46 N. L. R. B. 1115 (1943); *Matter of Prudential Insurance Co. of America*, 47 N. L. R. B. 1103 (1943); *Matter of Prudential Insurance Co. of America*, 49 N. L. R. B. 450 (1943); *Matter of Life and Casualty Insurance Co. of Tennessee*, 53 N. L. R. B. No. 216 (1943); and the instant case.

phrase. No one has suggested heretofore that the reach of the Act was narrower than the Constitution permits. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 31-32 and 76, 94-100 (dissent). On the contrary, this Court itself has stated (*National Labor Relations Board v. Fainblatt*, 306 U. S. 601, 607) that:

The Act on its face thus evidences the intention of Congress to exercise whatever power is constitutionally given to it to regulate commerce \* \* \*

Other cases also manifest an understanding that the limits of the Act are coextensive with those of the commerce clause. *Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, 303 U. S. 453; *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197.

The legislative history of the Act shows both that Congress wished to exercise to the fullest extent the federal commerce power and that it expected the Court in applying the Act to give the Constitution a broader interpretation than had been placed on it in many prior decisions.

The statement in the Senate Report which accompanied the bill which became the Act "is unequivocal that:

\* \* \* it is intended in this bill to exercise the full constitutional power of Congress to prevent the described unfair labor practices \* \* \*

---

<sup>66</sup> Sen. Rep. No. 573, 74th Cong., 1st Sess., pp. 18, 19.

\* \* \* \* \*

While this bill of course does not intend to go beyond the constitutional power of Congress, as that power may be marked out by the courts, it seeks the full limit of that power in preventing these unfair labor practices. It seeks to prevent them, whether they burden interstate commerce by causing strikes, or by occurring in the stream of interstate commerce, or by overturning the balance of economic forces upon which the full flow of commerce depends.

Similarly, Senator Wagner, sponsor of the bill in the Senate, stated during the debates preceding enactment:<sup>65</sup>

\* \* \* the Federal Government has the power under the Constitution to prevent any burden whatsoever upon interstate commerce. And there can be no doubt that Congress intends this power to be exercised in full to prevent unfair practices that cause or threaten to cause even the slightest burden.

And in answer to a query from Senator Costigan:<sup>66</sup>

Is it proper to say that the measure is designed to apply to all industries which affect commerce?

Senator Wagner replied:

That is the intent.

---

<sup>65</sup> 79 Cong. Rec. 7572.

<sup>66</sup> 79 Cong. Rec. 7573.

Subsequent to the passage of the bill by the Senate but prior to its reaching the floor of the House, this Court rendered its opinion in *Schechter Corp. v. United States*, 295 U. S. 495. A few days after the decision in the *Schechter* case Congressman Connery, who was the sponsor of the bill in the House as well as chairman of the committee reporting the bill, stated: <sup>67</sup>

We are faced now with a barrage of propaganda from inspired sources to the effect that in view of the recent Court decisions the Congress has no alternative but to abandon its legislative program and go home. Implications are being read into those decisions in an endeavor to make them applicable to other situations and problems not before the Court. The President, in his press conference on Friday, painted a vivid picture of national impotence to cope with national problems which would be our plight, if the Supreme Court in future cases does not limit its decision in the *Schechter* case to the particular facts before the Court.

\* \* \* \* \*

In view of this salutary reminder by the Supreme Court that its decisions are controlling only on the facts of the case before it, we are guilty of no disrespect for that tribunal in pressing for the passage of the Wagner-Connery bill. I have no doubt that Congress believes in the principles and pur-

---

<sup>67</sup> 79 Cong. Rec. 8540.

poses of the bill, and this being so, the Congress would be shirking its plain duty if dubious, and I believe unwarranted implications from recent court decisions stampede it into an abandonment of its legislative functions. This is no time to yield to defeatist talk and haul down the flag.

Congresswoman Norton, second ranking member of the House Committee in charge of the bill, in advocating passage of the bill, stated: <sup>88</sup>

We are living in a changing period. Conditions are not what they were when the Constitution was written. I have the greatest respect for the Constitution, but am enough of a realist to believe that we are living in an age that demands human legislation if we are to continue as a happy Nation \* \* \*

Other supporters of the bill in the House expressed similar views:

Mr. Cox. Does the gentleman not accept the decision of the Supreme Court as the right interpretation of the law?

Mr. Wood. No; I do not. I differ with the Supreme Court and I have the right to differ with them. <sup>89</sup>

Mr. MEAD. Mr. Chairman, the bill which we are considering this afternoon, known as the "Wagner-Connery labor-disputes bill" is more necessary now perhaps than when it was originally introduced. That

<sup>88</sup> 79 Cong. Rec. 9709.

<sup>89</sup> 79 Cong. Rec. 8816.

condition has been brought about by the recent action of the Supreme Court in invalidating the National Recovery Act. \* \* \*

\* \* \* There are some, however, who may be reluctant to vote for this bill because of its apparent invasion of the rights of our States. There are others who may find fault with it on constitutional grounds. To the former I will say that this measure is intended to apply to those workers whose employment either directly or indirectly comes under the commerce clause of the Constitution. \* \* \*

\* \* \* \* \*

The rapid growth and development of industry, the concentration of wealth in the hands of a few, the uneven distribution of the wealth produced in the country, the modern methods of communication and transportation, the compounding of intra-state factory units into the national and international industrial organizations, all this has brought about a compelling change in matters such as we are considering in this proposed legislation.<sup>70</sup>

The whole tenor of the debates on the floor of Congress makes it clear beyond any doubt that Congress did not intend to write into the Act any exceptions based on prior decisions of the Court that any activity was beyond the federal commerce power. The Act was passed with the repeatedly expressed wish that the Court in interpreting it

<sup>70</sup> 79 Cong. Rec. 9710-9711.



appraise the Constitution anew in the light of the necessity of federal encouragement of collective bargaining in its relation to the protection of commerce. Certainly nothing could be more repugnant to the intent of those who enacted the Act than that decisions of the last century declaring insurance not to be commerce should limit the full application of the Act to all those to whom it could constitutionally be applied. There is no suggestion in the legislative history of the Act that all "trade" was to be safeguarded save the insurance trade, all "traffic," save the traffic in insurance policies, premiums and benefits, all "transportation or communication" save that involving the insurance business.<sup>71</sup>

The sweeping definition of the term "commerce" which is contained in the Act is not surprising. Congress did not seek to protect a particular type of commerce, as in the Railway Labor Act for example, but rather to regulate the labor relations of all enterprises subject to the reach of the commerce power. Petitioner's contention with respect to the insurance cases attributes to Congress a concern with the particular types of employers and categories of commerce which is wholly alien to the legislation. Congress was not thinking in terms of particular industries—and no intention to exempt any industry coming within the meaning of the words employed in the Act can fairly be attributed to it.

---

<sup>71</sup> The words quoted are from Section 2 (6) of the Act.

## III

# PETITIONER'S STATUS AS A FRATERNAL BENEFIT SOCIETY DOES NOT EXEMPT IT FROM THE ACT

Petitioner argues that even if the life-insurance business might be held to be in commerce, it is a fraternal, benevolent, non-profit organization not engaged in the insurance business and accordingly not in commerce. It is contended that petitioner's insurance activities are "incidental" (Br. pp. 22, 31) to its main purposes, and that it must be regarded as non-commercial because the Illinois Insurance Code declares it to be a "charitable and benevolent institution." We think that the facts set forth in the Statement (pp. 2-9, *supra*), in themselves refute these propositions.

## A. PETITIONER IS IN THE INSURANCE BUSINESS

The record shows that petitioner engages in all the activities of the ordinary mutual life insurance company. Like the old-line insurance companies it issues a variety of life insurance and endowment policies, pays the expenses of its business out of first year contributions (R. 105), offers cash-surrender values, non-forfeiture options, settlement options, and dividends.<sup>72</sup> Its rates are

<sup>72</sup> That this "commercial" system has not handicapped petitioner would appear from the fact that it is among the ten largest of the American fraternal benefit societies in terms of insurance in force and total income. 49 *Statistics Fraternal Societies* (1943), pp. 26-28.

comparable to ordinary mutual insurance rates.<sup>73</sup> Petitioner employs salesmen to sell its insurance in the same manner as the ordinary commercial company. Only a very small amount—about 5 percent—of petitioner's income and expenditures are for its benevolent activities.<sup>74</sup> Persons may not join the organization without taking out an insurance policy; "social members" are no longer admitted (R. 7-8, 54). In view of these facts it is difficult to understand petitioner's statement that its insurance activities are "but incidental to the main objects of its existence" (R. 22). Whatever may have been the purposes of its founders, as expressed in the eloquent preamble to its constitution (R. 52), clearly petitioner is now primarily an insurance company.

---

<sup>73</sup> Compare the quotations of participating life insurance rates in *Best's Illustrations* (1943), with the rates quoted in Petitioner's Manual (Bd. Exh. 10).

<sup>74</sup> Petitioner asserts that in 1941 benevolent payments were \$252,210 (R. 170) and insurance benefit payments \$1,845,126 (R. 105). These figures do not take into account the large portion of petitioner's insurance income retained as a reserve fund or used to pay expenses; petitioner's total income in 1941 was \$5,717,344 (R. 105). Petitioner also asserts that since its organization, it has spent \$7,109,786 for charitable purposes, and \$38,076,756 in "mortuary claims paid" (R. 167-168). It should be noted that this apparently large sum given to charity covers the period from 1880 to 1940 (R. 167). The history of the fraternal movement shows that the societies have abandoned their prior benevolent emphasis (*infra*, p. 64-69), and petitioner's appeal to its charitable origin does not change the nature of its present insurance activities.

"From the simple and modest beginning of sixty years ago", petitioner tells its membership, "the Polish National Alliance in recent times has greatly expanded and developed into a large fraternal insurance organization. While ideologically it has remained ever true to its principles and today pursues its ideals with vital eagerness, through its expansion it has entered the field of sharp competition of business institutions.

"Meeting the challenge of new demands, we have, of necessity, introduced more efficient business methods, invited new suggestions, and discarded outmoded plans of operation. Accordingly, in the past few years a large variety of marketable certificates of insurance have been issued, ranging from the ordinary life type to that of the endowment kind \* \* \*" (R. 107).

Petitioner in these terms acknowledges its participation in the general evolution of the fraternal benefit society which has in recent decades emerged from the "protective" and "beneficial" orders and brotherhoods of an earlier day. A fraternal benefit society such as petitioner must be distinguished from those orders which provide for contributions to members in distress, indeterminate lump sum payments on the event of disability, or for burial and benefits in kind (such as care for aged members). Like the ordinary beneficial associations and fraternal orders, fraternal benefit societies are characterized by a lodge

system, ritualism, and representative government. But in addition to and in place of charitable and related programs conceived as a method of giving tangible expression to the benevolence inherent in fraternal orders, fraternal benefit societies adopted as one of their activities the payment of insurance benefits to the dependents of members.<sup>75</sup>

Fraternal benefit societies originally financed the payment of benefits through an assessment scheme whereby the dependents of the certificate holders received the proceeds of a flat assessment upon all of the surviving members. This post-mortem assessment system resulted in increasingly burdensome costs with the advancing age level of the society. This burden fell with particular weight upon the more youthful members, who, because of their lower mortality experience, were required to pay a higher price for protection than their lower mortality warranted. Since it was cheaper for this class to form a new society than to join an established one, a great many fraternal organizations failed.<sup>76</sup>

<sup>75</sup> See Nichols, *Fraternal Insurance in the United States; Its Origin, Development, Character, and Existing Status*, 70 *Annals of the American Academy* 109 (1921); *Taxable Status of Fraternal Insurance*, 47 *Yale Law J.* 965; *Illinois Insurance Code*, Ill. Rev. Stat. (1941), Ch. 73, Art. XVII, Sec. 308; *Beneficial Associations*, 10 C. J. S. § 1.

<sup>76</sup> It has been estimated that of the 3,500 mutual assessment associations organized between 1870 and 1910, no less than 3,000 failed after an average life of 15 years. *Fra-*

The unworkability of this and other assessment schemes resulted in the adoption by fraternal of the protective features long characteristic of old line insurance. Chief among these has been the acceptance of the level premium plan and the accumulation of a reserve.<sup>77</sup> Through the use of mortality tables, interest assumptions and expense estimates, premiums were calculated on a scientific basis so as to keep them level at the initial rate. Since a level premium to cover an increasing hazard implies an overcharge in the early years which must be conserved for later years,<sup>78</sup> fraternal insurance acquired the same investment characteristics as ordinary life insurance. This excess thus accumulated and invested constitutes, as in old line companies, a reserve which is scientifically calculable and apportionable to each policy.<sup>79</sup>

*ternal Orders*, 6 Encyc. Soc. Sciences (1931) 423, 424. Of the 208 large fraternal benefit societies reporting in 1936, only 8 antedated 1871 and only 38 were in existence prior to 1882. 42 *Statistics Fraternal Societies* (1936) 24.

<sup>77</sup> A history of this transformation appears in Basye, Walter, *History and Operation of Fraternal Insurance*, Rochester (1919). The fraternal were placed upon a reserve basis by the so-called "Mobile" (1910) and "New York Conference" (1912) bills. They are described in Basye, pp. 108-190.

<sup>78</sup> *New York Life Insurance Co. v. Statham*, 93 U. S. 24, 30, 34.

<sup>79</sup> See 16 *Proceedings, National Fraternal Congress of America*, 157 (1929): "With the adoption of adequate rates



The transformation in the rate structure of the fraternal benefit society has resulted in the diversification of its insurance activity. The accumulation of a reserve has made possible duplication of the standard attractions of the old line life companies such as cash-surrender and loan values, paid-up insurance, and extended insurance values. Endowment, term, and juvenile insurance are now familiar offerings of the fraternal societies. Also, evidencing the commercialization of the societies has been the trend toward elimination of any restrictions upon the class of those who may be named as beneficiaries.<sup>80</sup>

Moreover, the entire relationship of the individual to the society has been altered. From a mere adjunct of the society, an "insurance rank" offered optionally to members,<sup>81</sup> insurance has become the dominant activity of the society. Mem-

based upon mortality tables used by old line companies it was deemed unfair, inequitable, and impractical to deprive the member of the benefit of the reserve accumulation.

"It would be difficult to acquire new membership and retain those already members, if the member paid a level rate equivalent to that exacted by the insurance companies, and the society forfeited the reserves while the insurance company granted reserve options."

<sup>80</sup> Illinois Insurance Code, Ill. Rev. Stat. (1941), Ch. 73, Art. XVII, Sec. 286; Proposed Amendments to New York Conference Bill, 15 *Proceedings, National Fraternal Congress of America*, 251 (1928); 16 *Proceedings, National Fraternal Congress of America*, 107 (1929).

<sup>81</sup> *Knight v. Pythias v. Kalinski*, 163 U. S. 289.

bership and coverage have become synonymous, and qualifications for membership relate fully as much to eligibility for insurance as to other qualifications. Formerly a participant in a fellowship devoted to certain common social or cultural aims who was called upon at irregular intervals to relieve the distress of a fellow lodge member, the fraternal society member today has become primarily an insurance risk entitled to fixed insurance benefits upon his death. The variety of insurance sold and the decline of the lodge as a selling medium have made commonplace paid solicitors who are trained for this work (*supra*, p. 8). Except for perfunctory retention of ritualistic requirements, representative government and the so-called "open contract" provision whereby the society reserves the privilege of readjusting rates if the future so demands, there are no real differences between the fraternal insurance society and the mutual life insurance company. As one commentator has bluntly put it, fraternal societies are "primarily mutual life insurance companies, rituals and the other fraternal features being utilized as promotional devices in the selling of insurance or similar benefits."<sup>2</sup> The fraternalists

<sup>2</sup> Gist, N. P., *Secret Societies: A Cultural Study of Fraternalism in the United States*, University of Missouri Studies, Vol. XV, No. 4, p. 156; see also, Bureau of Research and Statistics, Social Security Board, Report No. 6, *Cash Benefits Under Voluntary Disability Insurance in the United States*, pp. 72-73; *Fraternal Life Insurance*, Indianapolis (1942), p. 113.

themselves have proclaimed the fact that they are in the life insurance business: "Many of us believe the primary purpose of the fraternal benefit society of today is life insurance. The societies are now and have been for many years in the 'life insurance business.'"<sup>23</sup>

It is significant that, although calling fraternal benefit societies "benevolent and charitable," Illinois regulates them in its insurance code and subjects them to substantially the same requirements as other life insurance companies. Illinois Insurance Code, Ill. Rev. Stat. (1941), Ch. 73, Art. XVII, Sec. 315.

It is thus plain that whatever petitioner may formerly have been, it is now in the life insurance business. If petitioner is engaged in the insurance business, it is immaterial what other enterprises—charitable or otherwise—it conducts. The Board did not find that petitioner's benevolent activities affected commerce. The mere fact that a company engaged in business is also engaged in charity or benevolence does not render the conduct of the former any the less commercial. Or, conversely, the fact that a charitable organization owns and operates a business will not entitle the latter aspect of its activities to treatment as a charity.

---

<sup>23</sup> Report of the Committee on Statutory Legislation, 16 *Proceedings, National Fraternal Congress of America*, 155 (1929).

## B. PETITIONER IS NOT A CHARITABLE AND NON-PROFIT ORGANIZATION

Even if petitioner were held not to be an insurance company in the ordinary sense, this would not mean that it was not engaged in commerce. Its activities in soliciting interstate purchases of "benefits" and in performing its contracts through interstate channels constitute interstate commerce, whether or not it is in the insurance business in the strict sense. No one has suggested that the commerce clause applies *only* to insurance companies.

Petitioner argues, however, that it is not in commerce because it is a non-profit and charitable organization. This is both inaccurate and irrelevant.

Although a small portion of petitioner's funds are used for benevolent purposes, this does not make petitioner a charitable organization. The object of its insurance business is to benefit its members and their families. They are not required to be in need of charity. Nor are any benefits given them without charge.<sup>44</sup> On the contrary,

---

<sup>44</sup> Compare *Hassett v. Associated Hospital Service Corporation*, 125 F. (2d) 611, 614 (C. C. A. 1), certiorari denied, 316 U. S. 672, in which the court declared with respect to a group hospitalization plan:

"\* \* \* The subscribers consider themselves neither charitable donors nor the recipients of charity. The corporate capital is not composed of charitable contributions but fees exacted from subscribers. Without the subscription payments the corporation could not function. Membership is not limited to the needy but, as a matter of fact, is composed largely of the middle class and well-to-do. It is diffi-

they are required to pay the customary premiums for what they receive. Indeed, petitioner employs the Retail Credit Company to investigate the financial responsibility of each applicant before he can become a member (see p. 9, *supra*).

Petitioner apparently considers itself to be a non-profit organization because it is owned and controlled by its policyholders and not for the financial advantage of outside stockholders. But this does not mean that petitioner does not make profits on its business, but only that the owners to whom the profits are distributed in the form of dividends are also policyholders. In this respect, petitioner's position is the same as that of any mutual insurance company. This Court has recognized that the returns in the form of dividends to members yielded by a participating insurance plan of the type operated by petitioner are properly classifiable as profits. In *Penn Mutual Co. v. Lederer*, 252 U. S. 523, 534, the Court said:

The fact that the investment resulting in accumulation or dividend is made by a co-operative as distinguished from a capitalis-

---

cult to distinguish the plaintiff corporation from a mutual insurance company or an employee benefit plan. Here we have what is essentially a business arrangement under which a group of people have banded themselves together to purchase at rates as low as possible hospital care in the event of sickness or accident. These rates are subject to approval by the Massachusetts Commissioner of Insurance. Such a corporation is not charitable. \* \* \*

tic concern does not prevent the amount thereof being properly deemed a profit on the investment.

In *American Medical Association v. United States*, 317 U. S. 519, 528, the Court stated, citing cases:

The fact that it is cooperative, and procures service and facilities on behalf of its members only, does not remove its activities from the sphere of business.

See, also, *Hassett v. Associated Hospital Service Corporation*, *supra*.

C. EVEN IF PETITIONER WERE A NON-PROFIT ORGANIZATION, IT WOULD BE SUBJECT TO THE COMMERCE POWER

Even if the relatively small amount of benevolent activity in which petitioner engages clothed all of its operations with a benevolent character, it would nevertheless be subject to the commerce power and to the Act. It is well settled that the existence of a narrowly "commercial" motive or profit incentive does not fix the limits of the commerce power. *Caminetti v. United States*, 242 U. S. 470; *Gooch v. United States*, 297 U. S. 124; *Covington Bridge Co. v. Kentucky*, 154 U. S. 204; *United States v. Hill*, 248 U. S. 420; *United States v. Simpson*, 252 U. S. 465; *National Labor Rela-*



*tions Board v. Christian Board of Publication*, 113 F. (2d) 678 (C. C. A. 8).<sup>85</sup>

In *Associated Press v. National Labor Relations Board*, 301 U. S. 103, 128-129, the Court stated:

\* \* \* Interstate communication of a business nature, whatever the means of such communication, is interstate commerce regulable by Congress under the Constitution. This conclusion is unaffected by the fact that the petitioner does not sell news and does not operate for profit \* \* \*.

The *Associated Press* case demonstrates that co-operative nonprofit organizations are not exempt from the National Labor Relations Act.<sup>86</sup> The Act contains no exemption in favor of employers who operate upon a non-profit basis. Indeed, Section 2 (2) of the Act expressly identifies a labor organization when acting as an employer as subject to the Act. Labor organizations are, of course, not only organized on a non-profit basis but operate

<sup>85</sup> See, also, *North Whittier Heights Citrus Ass'n v. National Labor Relations Board*, 109 F. (2d) 76 (C. C. A. 9), certiorari denied, 310 U. S. 632, and *National Labor Relations Board v. Grower-Shipper Vegetable Ass'n*, 122 F. (2d) 368 (C. C. A. 9).

<sup>86</sup> The *Associated Press* case may be regarded as one in which the association operated for the benefit of its members rather than as a non-profit organization. If so, petitioner belongs in the same category.

extensive fraternal insurance systems. See, *The Fraternal Compend Digest*, 1941, pp. 55, 56, 98, 178, 180, 245. Moreover, even where Congress has expressly exempted fraternal organizations from social legislation, it has done so on a very limited basis. Thus the Social Security Act as amended, while exempting from the old age assistance provisions service performed for an employer "organized and operated exclusively" for charitable and related purposes (Section 209 (b) (8)), exempts only those employees of fraternal benefit societies who are engaged in ritualistic and dues collection work in the lodges "away from the home office" (Section 209 (b) (10) (A) (ii), 49 Stat. 625, 53 Stat. 1373, 42 U. S. C., Sec. 409. See also Internal Revenue Code, as amended, Sections 1426 (b) (8), 10 (A) (ii), 1607 (c) (8).

#### D. THE ILLINOIS LAW IS IMMATERIAL

Petitioner refers to the declaration of the Illinois Insurance Code (Ill. Rev. Stat. (1941), Ch. 73, Art. XVII, Sec. 314) that every fraternal benefit society organized or operated under the Code "is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt" from state and local taxation. This definition, descriptive only of earlier day brotherhoods whose benevolent form and function were deemed to entitle them to preferential tax treatment, does not—and we think does not purport

to—determine the status of an organization under federal law. The application of the federal statute depends on “the character of the business actually done” (*Bowers v. Lawyers Mortgage Co.*, 285 U. S. 182, 188; *National Commercial Title Co. v. Duffy*, 132 F. (2d) 86, 88 (C. C. A. 3)), not the “name \* \* \* given to the interest or right by state law” (*Morgan v. Commissioner*, 309 U. S. 78, 81, and cases cited). “State nomenclature is not binding.” *Hassett v. Associated Hospital Service Corp.*, 125 F. (2d) 611, 616 (C. C. A. 1), certiorari denied, 316 U. S. 672.

On this point we think that little can be added to the decision of the court below, which states (R. 233):

Notwithstanding that petitioner is incorporated as a fraternal association, we think the conclusion is inescapable that it is engaged in the insurance business in a manner similar; if not precisely the same, as mutual life insurance companies. \* \* \*

We think we need not labor the distinction which petitioner seeks to draw between a fraternal society and an insurance company. After all, for the purpose of the instant case, it is rather immaterial what label we attach to petitioner's activities. Of more importance is the nature and character thereof. The fact that it was organized for noble and patriotic purposes and has continued in that groove, is not incon-

sistent with a finding that it has and is engaging in the business of insurance. Also, we are not impressed with the contention that the latter is merely incidental to the former. So far as we can ascertain from the record before us, we are of the view that it is more accurate to conclude that its fraternal activities are incidental to its insurance business. \* \* \*

#### CONCLUSION

For these reasons it is respectfully submitted that the judgment below should be affirmed.

✓ FRANCIS BIDDLE,  
*Attorney General.*

✓ CHARLES FAHY,  
*Solicitor General.*

✓ ROBERT L. STERN,  
*Special Assistant to the Attorney General.*

✓ ALVIN J. ROCKWELL,  
*General Counsel.*

✓ RUTH WEYAND,  
✓ FRANK DONNER,  
*Attorneys, National Labor Relations Board.*

DECEMBER 1943.

## APPENDIX

---

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1937, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*), are as follows:

### SEC. 2. When used in this Act—

\* \* \* \* \*

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

\* \* \* \* \*

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead

to a labor dispute burdening or obstructing commerce or the free flow of commerce.

\* \* \* \*

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.



# SUPREME COURT OF THE UNITED STATES.

No. 226 —OCTOBER TERM, 1943.

Polish National Alliance of the United States of North America, Petitioner,  vs. National Labor Relations Board.	}	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.
---	---	---

[June 5, 1944.]

Mr. Justice FRANKFURTER delivered the opinion of the Court.

The National Labor Relations Board, having found that petitioner, in violation of the National Labor Relations Act, had engaged in unfair labor practices, issued an order of cessation against it. 42 N. L. R. B. 1375. On a petition for review and a cross-petition of the Board for enforcement, the Circuit Court of Appeals for the Seventh Circuit sustained the order. 136 F. 2d 175. Of the numerous issues before that court only two are open here, the importance of which led us to grant certiorari. 320 U. S. 725. The questions are these: (1) In view of the petitioner's activities, is the conduct found by the Board to constitute unfair labor practices within the scope of the National Labor Relations Act; (2) if Congress has proscribed such conduct, has it exceeded its power to regulate commerce among the several States?

The Polish National Alliance is a fraternal benefit society providing death, disability, and accident benefits to its members and their beneficiaries. Incorporated under the laws of Illinois, it is organized into 1,817 lodges scattered through twenty-seven States, the District of Columbia, and the Province of Manitoba, Canada. As the "largest fraternal organization in the world of Americans of Polish descent", it had outstanding, in 1941, 272,897 insurance benefit certificates with a face value of nearly \$160,000,000. Over 76% of these certificates were held by persons living outside of Illinois. At the end of that year, petitioner's assets totalled about \$30,000,000, in cash, real estate in five States, United States Government bonds, foreign government bonds, bonds of various States and their political subdivisions, railroad, public utility, and indus-

## 2 *Polish Nat'l Alliance of the United States vs. N. L. R. B.*

trial bonds, and stocks. From its organization in 1880 until the end of 1940; the Alliance spent over \$7,000,000 for charitable, educational, and fraternal activities among its members. During the same period, it paid out over \$38,000,000 in "mortuary claims".

Petitioner directs from its home office in Chicago a staff of over 225 full and part-time organizers and field agents in twenty-six States whose traveling expenses are borne by Alliance and who receive commissions for new memberships. Since its 1939 convention, Alliance has admitted no more "social members". Thereafter, all applicants have been required to buy insurance certificates providing various types of life, endowment, and term coverage. These policies contain the typical loan, cash surrender value, optional settlement, and dividend provisions. Petitioner spent over \$10,000 for advertising outside of Illinois during 1941. It employs a Georgia credit company to report on the financial standing and character of the applicants, and reinsures substandard risks with an Indiana company.

Alliance lodges are organized into 190 councils, 160 of which are outside the State of Illinois. The councils elect delegates to the national convention, and it in turn elects the executive and administrative officers. The Censor of Alliance is its ranking officer and he appoints an editorial staff which publishes a weekly paper distributed to members. Of the 6,857,556 copies published in 1941, about 80% were mailed to persons living outside of Illinois.

This summary of the activities of Alliance and of the methods and facilities for their pursuit amply shows the web of money-making transactions woven across many State lines. An effective strike against such a business enterprise, centered in Chicago but radiating from it all over the country, would as a practical matter certainly burden and obstruct the means of transmission and communication across these state lines. Stoppage or disruption of the work in Chicago involves interruptions in the steady stream, into and out of Illinois, of bills, notices, and policies, the payments of commissions, the making of loans on policies, the insertion and circulation of advertising material in newspapers, and its dissemination over the radio. The effect of such interruptions on commerce is unmistakable. The load of interstate communication and transportation services is lessened, cash necessary for interstate business becomes unavailable, the business, interstate, of newspapers and

radio stations suffer. Nor is this all. Alliance, it appears, plays a credit rôle in interstate industries, railroads, and other public utilities. In 1941, it acquired securities in an amount in excess of \$11,000,000, and sold or redeemed securities costing more than \$7,500,000. Financial transactions of this magnitude cannot be impeded even temporarily without affecting to an extent not negligible the interstate enterprises in which the large assets of Alliance are invested. That such are the substantial effects on interstate commerce of dislocating labor practices by insurance companies, was established before the Labor Board in at least thirteen comparable situations.<sup>1</sup> The practical justification of such a conclusion has not heretofore been challenged. Considerations like these led the Board to find that petitioner's practices "have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce", and were therefore "unfair labor practices affecting commerce within the meaning of Section 2(6) and (7)", and as such, prohibited by § 10 of the Wagner Act.

By that Act, Congress in order to protect interstate commerce from adverse effects of labor disputes has undertaken to regulate all conduct having such consequences that constitutionally it can regulate. *Labor Board v. Jones & Laughlin*, 301 U. S. 1, 31; *Labor Board v. Fainblatt*, 306 U. S. 601, 607. With negligible exceptions, Congress did not exercise its power to regulate commerce prior to its enactment in 1887 of the Interstate Commerce Act, 24 Stat. 379, 49 U. S. C. § 1 *et seq.* Since that time it has frequently chosen, as the Statutes at Large abundantly prove, to regulate only part of what it constitutionally can regulate. Again, half a dozen enactments, other than the National Labor Relations

<sup>1</sup> *Matter of John Hancock Mutual Life Insurance Co.*, 26 N. L. R. B. 1024; *Matter of Life Insurance Co. of Virginia*, 29 N. L. R. B. 246; *Matter of Life Insurance Co. of Virginia*, 31 N. L. R. B. 674; *Matter of Supreme Liberty Life Insurance Co.*, 32 N. L. R. B. 94; *Matter of Life Insurance Co. of Virginia*, 38 N. L. R. B. 20; *Matter of Colonial Life Insurance Co. of America*, 42 N. L. R. B. 1177; *Matter of Metropolitan Life Insurance Co.*, 43 N. L. R. B. 962; *Matter of Prudential Insurance Co. of America*, 46 N. L. R. B. 430; *Matter of Northwestern Mutual Fire Association*, 46 N. L. R. B. 825; *Matter of Peoples Life Insurance Co. of Washington, D. C.*, 46 N. L. R. B. 1115; *Matter of Prudential Insurance Co. of America*, 47 N. L. R. B. 1103; *Matter of Prudential Insurance Co. of America*, 49 N. L. R. B. 450; *Matter of Life and Casualty Insurance Co. of Tennessee*, 53 N. L. R. B. 1196. See also *National Labor Relations Board v. Bank of America*, 130 F. 2d 624, 626.

#### 4 *Polish Nat'l Alliance of the United States vs. N. L. R. B.*

Act, are sufficient to illustrate that when it wants to bring aspects of commerce within the full sweep of its constitutional authority, it manifests its purpose by regulating not only "commerce" but also matters which "affect", "interrupt", or "promote" interstate commerce. See, for example, Act of June 18, 1934, § 2, 48 Stat. 979, 18 U. S. C. § 420a; Bituminous Coal Act, § 4-A, 50 Stat. 72, 83, 15 U. S. C. § 834; Civil Aeronautics Act, § 1(3), 52 Stat. 973, 977, 49 U. S. C. § 401(3); Federal Employers' Liability Act, § 1, as amended, 53 Stat. (part 2) 1404, 45 U. S. C. § 51; Transportation Act of 1920, § 307(b)(3), 41 Stat. 456, 471; Tennessee Valley Authority Act, § 31, 49 Stat. 1075, 1080, 16 U. S. C. § 831dd. In so describing the range of its control, Congress is not indulging stylistic preferences; it is mediating between federal and state authorities, and deciding what matters are to be taken over by the central Government and what to be left to the States. *United States v. Darby*, 312 U. S. 100; *Kirschbaum Co. v. Walling*, 316 U. S. 517. And so in this Act, unlike some federal regulatory measures, see *Trade Comm'n v. Bunte Bros.*, 312 U. S. 349, 351; *Kirschbaum Co. v. Walling*, *supra* at 522-523, Congress has explicitly regulated not merely transactions or goods in interstate commerce but activities which in isolation might be deemed to be merely local but in the interlacings of business across state lines adversely affect such commerce. By the Wagner Act, Congress gave the Board authority to prevent practices "tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." § 2(7) of the National Labor Relations Act (49 Stat. 449, 450, 29 U. S. C. § 152(7)). Congress therefore left it to the Board to ascertain whether proscribed practices would in particular situations adversely affect commerce when judged by the full reach of the constitutional power of Congress. Whether or no practices may be deemed by Congress to affect interstate commerce is not to be determined by confining judgment to the quantitative effect of the activities immediately before the Board. Appropriate for judgment is the fact that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce. *Labor Board v. Fainblatt*, *supra* at 607-608.

We have said enough to indicate the ground for our conclusion that the Board was not unjustified in finding that the unfair labor

practices found by it would affect commerce. And the undoubted fact that Alliance promotes, among Americans of Polish descent, interest in, and devotion to, the contributions that Poland has made to civilization does not subordinate its business activities to insignificance. Accordingly, the Board could find that its cultural and fraternal activities do not withdraw Alliance from amenability to the Wagner Act.

In this aspect, the case we have before us presents a wholly new problem of the relation of federal authority to the business of insurance. The long series of insurance cases that have come to this Court for more than seventy-five years, from *Paul v. Virginia*, 8 Wall. 168, to *N. Y. Life Ins. Co. v. Deer Lodge County*, 231 U. S. 495, have invariably involved some exercise of state power resisted, in most instances, on the claim that it was impliedly forbidden by the Commerce Clause. Such was the context in which this Court decided again and again that the making of a contract of insurance is not interstate commerce and that, since the business of insurance is in effect merely a congeries of contracts, the States may, for taxing and diverse other purposes, regulate the making of such contracts and the insurance business free from the limitations imposed upon state action by the Commerce Clause. Constitutional questions that look alike often are altogether different and call for different answers because they bring into play different provisions of the Constitution or different exertions of power under it. Thus, federal regulation does not preclude state taxation and state taxation does not preclude federal regulation. Compare, for example, *Heister v. Thomas Colliery Co.*, 266 U. S. 245, with *Sunshine Coal Co. v. Adkins*, 310 U. S. 381.

We have, therefore, now presented for the first time not an exercise of state but of national power in relation to the insurance business. And so the ultimate question is whether, in view of the relation between the activities of the insurance business before us and the operation of economic forces across state lines, the Constitution denies to Congress the power to say that the interplay of the insurance business and those economic forces is such that its power "to regulate Commerce . . . among the several States" carries with it the power to regulate the conduct here regulated by relevant legislation.

The process of adjusting the interacting areas of national and state authority over commerce has been reflected in hundreds of

6 *Polish Nat'l Alliance of the United States vs. N. L. R. B.*

eases from the very beginning of our history. Precisely the same kind of issues has plagued the two great English-speaking federations, the constitutions of which similarly distribute legislative power over business between central and subordinate governments. See § 91 of the British North America Act, 1867, 30 & 31 Viet., c. 3, and Report of the [Canadian] Royal Commission on Dominion-Provincial Relations, (1940) Bk. II, c. IV; § 51 of the Australia Constitution Act, 1900, 63 & 64 Viet., c. 12, and Report of the [Australian] Royal Commission on the Constitution, (1929) c. XIV. These are difficulties inherent in such a federal constitutional system:

The interpenetrations of modern society have not wiped out state lines. It is not for us to make inroads upon our federal system either by indifference to its maintenance or excessive regard for the unifying forces of modern technology. Scholastic reasoning may prove that no activity is isolated within the boundaries of a single State, but that cannot justify absorption of legislative power by the United States over every activity. On the other hand, the old admonition never becomes stale that this Court is concerned with the bounds of legal power and not with the bounds of wisdom in its exercise by Congress. When the conduct of an enterprise affects commerce among the States is a matter of practical judgment, not to be determined by abstract notions. The exercise of this practical judgment the Constitution entrusts primarily and very largely to the Congress; subject to the latter's control by the electorate. Great power was thus given to the Congress: the power of legislation and thereby the power of passing judgment upon the needs of a complex society. Strictly confined though far-reaching power was given to this Court: that of determining whether the Congress has exceeded limits allowable in reason for the judgment which it has exercised. To hold that Congress could not deem the activities here in question to affect what men of practical affairs would call commerce, and to deem them related to such commerce ~~not~~ by gossamer threads ~~but~~ by solid ties, would be to disrespect the judgment that is open to men who have the constitutional power and responsibility to legislate for the Nation.

*Judgment affirmed.*

Mr. Justice ROBERTS took no part in the consideration or disposition of this case.

*merely*

*and not*



Mr. Justice BLACK, concurring.

The National Labor Relations Act does not vest courts with power to review the evidence presented to the Labor Board and make independent findings of fact. 29 U. S. C. 160(e). Therefore the propriety of the Board's order in this case must be considered on the basis of the facts the Board found.

The Board did not exercise jurisdiction and enter its order on a fact finding that petitioner's insurance activities merely affected commerce in types of interstate business other than its own. On this fact issue it made no finding at all. Its finding was that the petitioner, being "engaged in the insurance business" was "engaged in commerce within the meaning of the Act." This ultimate finding of fact rested on detailed subordinate findings which revealed the widespread interstate activities of the petitioner in carrying on its insurance business. As the Court's opinion points out, these insurance activities involved a "steady stream, into and out of Illinois, of bills, notices, and policies, the payments of commissions, the making of loans on policies, the insertion and circulation of advertising material in newspapers, and its dissemination over the radio." Only on the basis of the ultimate finding that petitioner was itself "engaged in commerce" did the Board make the essential further finding that petitioner's refusal to bargain collectively with its employees had a "close, intimate, and substantial relation to commerce among the several States" and tended "to lead to labor disputes burdening and obstructing commerce."

As a conclusion of law the Board stated that petitioner's unfair labor practices constituted "unfair labor practices affecting commerce, within the meaning of Section 2(6) and (7) of the Act." Section 2(6) defines the term "commerce" to mean "trade, traffic . . ."; and Section 2(7) defines the term "affecting commerce" to mean either "in commerce" or "burdening or obstructing commerce." 49 Stat. 449, 450; 29 U. S. C. 152(6) and (7). From the language of these definitions, and the Board's findings above described, it is apparent that the Board's conclusion of law that "commerce" was "affected" by petitioner's unfair labor practices rested upon its previous conclusion of fact that petitioner's insurance business was engaged in commerce. The Board concluded that, since the insurance business itself was engaged in

commerce, petitioner's refusal to bargain, and the strike thereby provoked, would affect commerce. Compare *Associated Press v. Labor Board*, 301 U. S. 103, 128-130 with *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 219-224.

The doctrine that Congress may provide for regulation of activities not themselves interstate commerce, but merely "affecting" such commerce, rests on the premise that in certain fact situations the federal government may find that regulation of purely local and intrastate commerce is "necessary and proper" to prevent injury to interstate commerce. *Houston & Texas Ry. v. United States*, 234 U. S. 342; *Second Employers' Liability Cases*, 223 U. S. 1, 46-47; and see *Wickard v. Filburn*, 317 U. S. 111, 121. In applying this doctrine to particular situations this Court properly has been cautious, and has required clear findings before subjecting local business to paramount federal regulation. *City of Yonkers v. United States*, No. 109, this Term, and cases therein cited. It has insisted upon "suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear." *Id.*; *Florida v. United States*, 282 U. S. 194, 211-212; cf. *Phelps Dodge Corp. v. Labor Board*, 313 U. S. 177, 196-197; *Securities and Exchange Comm'n v. Chenery Corporation*, 318 U. S. 80, 92-95.

The Board not having found as a fact that petitioner's life insurance business affected interstate activities of other businesses, the first issue is whether the Board's findings that petitioner's insurance activities were conducted across state lines are supported by evidence. I think they are. This leads to the question, chiefly argued by both parties, "Is the business of insurance commerce, and, when conducted across state lines, subject to federal regulation as such under the Commerce Clause of the Constitution?" For the reasons given in the Court's opinions in this case and in *United States v. South-Eastern Underwriters Association*, No. 354, decided this day, I agree that the business of insurance is commerce, subject to federal regulation as such when conducted across state lines, and that the Board's order was proper.

Mr. Justice DOUGLAS and Mr. Justice MURPHY join in this opinion.

